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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, and 97

[Docket No. FAA–2002–13982; Amendment Nos. 1–49, 25–208, 97–1333]

RIN 2120–AD40

1–g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: In the November 26, 2002, issue of the **Federal Register**, the FAA published a final rule regarding 1–g stall speed as a basis for compliance with part 25 of the Federal Aviation Regulations (67 FR 70812). The final rule, as published, erroneously contained a former docket number. It contained an erroneous reference to a publication of a notice of proposed advisory circular revisions. It also contained a change to a part 25 section that was previously changed by an earlier amendment, and is therefore moot to this rulemaking. This document serves to correct these errors.

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Don Stimson, telephone (425) 227–1129.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on notice of proposed rulemaking (NPRM) Notice No. 95–17, which was published in the **Federal Register** on January 18, 1996 (61 FR 1260), FAA Docket No. 28404. The final rule, published November 26, 2002 at 67 FR 70812, should have been given a new docket number, based on the fact that the FAA now uses the Department of Transportation's Docket Management System (DMS) instead of the former FAA Docket System. The FAA transitioned to a new DMS maintained by the Department of Transportation during the course of this final rulemaking. At earlier stages of the rulemaking, the FAA Docket Number was 28404. Under the new DMS, the docket number is FAA–2002–13982. The final rule, as published, erroneously used the old, FAA docket number instead of the new DMS docket number.

The final rule docket erroneously made a reference to the publication (on November 12, 2002) of a notice of proposed advisory revisions. The advisory circular revisions have not yet been published and the document should have read that a notice of proposed advisory circular revisions will be published in the **Federal Register** shortly after publication of this final rule.

The final rule document contained a change to § 25.735, Brakes and braking systems, which was previously changed with Amendment 25–107. Therefore, the change made in this final rule document was unnecessary, and the appropriate text is reinstated.

Correction to Preamble of Final Rule

Document Number 02–29667, Amendment Nos. 1–49, 25–108, 97–133, published in the **Federal Register** on November 26, 2002 (67 FR 70812), is corrected as follows:

1. On page 70812, in the first column, fourth line, change ''Docket No. 28404'' to read ''Docket No. FAA–2002–13982.''

2. On page 78017, in the second column, fourth line, revise the last sentence of the paragraph to read: ''A notice of proposed advisory circular revisions will be published in the **Federal Register** shortly after publication of this final rule.''

Correcting Amendment to 14 CFR Part 25

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Section 25.735 is corrected by revising paragraphs (f)(2) and (g) to read as follows:

§ 25.735 Brakes and braking systems.

* * * * *

(f) * * *

(2) Maximum kinetic energy accelerate-stop. The maximum kinetic energy accelerate-stop is a rejected takeoff for the most critical combination of airplane takeoff weight and speed. The accelerate-stop brake kinetic energy absorption requirement of each wheel, brake, and tire assembly must be determined. It must be substantiated by dynamometer testing that the wheel, brake, and tire assembly is capable of absorbing not less than this level of kinetic energy throughout the defined wear range of the brake. The energy absorption rate derived from the airplane manufacturer's braking requirements must be achieved. The mean deceleration must not be less than 6 fps \2\.

* * * * *

(g) Brake condition after high kinetic energy dynamometer stop(s). Following the high kinetic energy stop demonstration(s) required by paragraph (f) of this section, with the parking brake promptly and fully applied for at least 3 minutes, it must be demonstrated that for at least 5 minutes from application of the parking brake, no condition occurs (or has occurred during the stop), including fire associated with the tire or wheel and brake assembly, that could prejudice the safe and complete evacuation of the airplane.

* * * * *

Issued in Washington, DC, on January 6, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–656 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–14–AD; Amendment 39–13015; AD 2003–01–04]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B and 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Inc. (BHTI) model helicopters. This action requires conducting various inspections associated with the main rotor grip (grip). If a crack is found, this AD requires replacing the grip before further flight. If delamination of the buffer pad on the grip tang inner surface is found, this AD requires inspecting the grip surface for corrosion or other damage and repairing or replacing the grip if corrosion or other damage is found. This AD also requires determining and recording the hours time-in-service (TIS) and the engine start/stop cycles for each grip on a component history card or equivalent record. Also, this action requires reporting certain inspection results and information to the FAA. This amendment is prompted by the discovery of 13 grips that cracked in the lower tang, three of which cracked in flight. The actions specified by this AD are intended to prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective January 30, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified BHTI model helicopters. This AD is prompted by 3 in-flight grip failures and 2 recent incidents of cracked grips discovered during a 1200-hour inspection and on a scheduled 2400-hour overhaul, which brings the total to 13 grips that have cracked in the lower tang. The two recent cracks originated in the lower tang blade bolt bore. No anomalies or damage to the blade, blade bolt bore, or buffer pad tang surface was found. Cracking for all of the grips has been attributed to mechanical damage from improper blade bolt bushing installation, improper rework of the buffer pad tang surface, or subsurface fatigue damage. All of the fatigue cracks have occurred on grips, part number (P/N) 204–011–121–009 and –121, installed on BHTI Model 212 helicopters; P/N 204–011–121–005, –009, and –113 are also very similar in design. Based on the failures that have occurred on grips, P/N 204–011–121–009 and –121, the manufacturer performed a fatigue analysis on grip, P/N 204–011–121–117, and discovered that the assigned life limit was inaccurate.

Hence, the FAA has determined that the other similarly-designed grips that are subjected to the same forces and loads as well as those grips adversely impacted by the inaccurate life limit may be susceptible to the same fatigue cracking as occurred on the Model 212 helicopter. Therefore, in addition to the repetitive ultrasonic (UT) inspection required for the Model 212 helicopter, the UT inspection also needs to be performed on the Model 204B, 205A, and 205A–1 helicopters with grip, P/N 204–011–121–117, installed. Additionally, when the service life for grips, P/N 201–011–121–005, –113, and –117, was established, we did not anticipate that these grips would be installed on the Model 205B helicopters, which has a higher power rating that is equivalent to the power rating of the twin-engine Model 212 helicopter. Operations at the higher power rating cause additional fatigue stresses on those grips installed on the Model 205B helicopter. Further, Supplemental Type Certificate (STC) SH5132NM, in part, allows the installation of grips, P/N 204–011–121–009 and –121, on the Model 205A–1 helicopter. This STC also allows the installation of additional dynamic components, including heavier main rotor blades, which add greater fatigue stresses to the P/N 204–011–121–009 and –121 grips. The actions specified in this AD are intended to prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter.

The FAA has reviewed the following BHTI service information:

- Operations Safety Notices 204–85–6, 205–85–9, and 212–85–13 all dated November 14, 1985.
- Alert Service Bulletin (ASB) 212–94–92, Revision A, dated March 13, 1995, which describes procedures for inspection and overhaul requirements of certain grips.
- ASB's 212–02–116, Revision A, dated October 30, 2002, and 205B–02–39, Revision B, dated November 22, 2002, which specify a UT inspection of certain grips; and the attached Nondestructive Inspection Procedure, Log No. 00–340, Revision E, dated April 9, 2002.

A crack in a grip creates a critical unsafe condition. This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter. This AD requires the following actions:

- Within 10 hours TIS, determining and recording the hours TIS and the engine start/stop cycles for each grip on a component history card or equivalent record. On the single-engine model helicopters, one ''engine start/stop cycle'' occurs when the engine is started. On the Model 212 helicopter, one ''engine start/stop cycle'' occurs when either one or both engines are started. The intent is to add one ''engine start/stop cycle'' each time helicopter power starts the main rotor system turning.
- Within 10 hours TIS and thereafter at intervals not to exceed 25 hours TIS, visually inspecting the exposed surfaces of the upper and lower tangs of each grip for a crack, using a 10-power or higher magnifying glass.
- Initially and at specified intervals depending on the hours TIS or the engine start/stop cycles, whichever occurs first, conducting initial and repetitive UT inspections for the grips in accordance with the Nondestructive Inspection Procedure, Log No. 00–340, Revision E, dated April 9, 2002.
- At intervals not to exceed 1200 hours or 24 months, whichever occurs first, inspecting each buffer pad on the tang inner surfaces for delamination and removing the buffer pad and inspecting the grip surface for corrosion and other damage if delamination is found.
- Within 2400 hours TIS or at the next overhaul of the main rotor hub, whichever occurs first, and thereafter at

intervals not to exceed 2400 hours TIS, inspecting the surface of each grip for corrosion or other damage and conducting a fluorescent-penetrant inspection of the grip for a crack.

• Before further flight, replacing any grip with a crack, corrosion, or damage with an airworthy grip or repairing a grip with damage or corrosion if the damage or corrosion is within certain limits.

• Reporting certain inspection results and information to the FAA in accordance with Appendix 1 of this AD.

These AD actions are intended to be interim actions. The FAA is collecting data for further analysis to assist in determining appropriate terminating action.

The UT inspection of the grip must be performed by a UT Level I Special, Level II, or Level III inspector, qualified under the guidelines established by MIL–STD–410E, ATA Specification 105, AIA–NAS–410, or an FAA-accepted equivalent for qualification standards of Nondestructive Testing inspection/evaluation personnel. Recurrent training and examinations are part of the qualification requirements.

The short compliance time involved is required because the previously described critical unsafe condition of cracking in the grips can adversely affect the controllability and structural integrity of the helicopter. Therefore, this AD requires, before 10 hours TIS, visually inspecting the exposed surfaces of each grip for a crack and, before further flight, replacing or repairing the grip, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will affect 110 helicopters and that it will take approximately 7 work hours to create and maintain the records, 6.25 work hours to conduct the inspections, and 10 work hours to replace the grip, at an average labor rate of $60 per work hour. Required parts will cost approximately $18,390 per grip replaced. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $315,330, assuming replacement of a total of 12 grips.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–14–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–01–04 Bell Helicopter Textron, Inc.: Amendment 39–13015. Docket No. 2002–SW–14–AD.

Applicability: The following model helicopters with the listed part number (P/N) installed, certificated in any category:

Model	With main rotor grip (Grip) P/N
(1) 205B	204–011–121–005, −009, −113, −117, or −121.
(2) 212	204–011–121–009 or −121.
(3) 204B	204–011–121–005 if the grip was ever installed on a Model 205B helicopter.
(4) 205A and 205A–1	204–011–121–005 or −113 if the grip was ever installed on a Model 205B helicopter.
(5) 204B, 205A, and 205A–1	204–011–121–117.
(6) 205A–1	204–011–121–009 or −121 modified in accordance with Supplemental Type Certificate (STC) SH5132NM.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), create a component history card or equivalent record and determine and record the total hours TIS for each grip. If the total hours TIS cannot be determined from the helicopter records, assume and record 900 hours TIS for each year the grip has been installed on any helicopter. Continue to count and record the hours TIS and begin to count and record the number of times the helicopter engine(s) are started (engine start/stop cycles).

(b) Within 10 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, without removing the main rotor blades:

(1) Clean the exposed surfaces of the upper and lower tangs of each grip with denatured alcohol. Wipe dry.

(2) Using a 10-power or higher magnifying glass, visually inspect the exposed surfaces of the upper and lower tangs of each grip for a crack. Pay particular attention to the lower surface of each lower grip tang from the main rotor blade bolt-bushing flange to the leading and trailing edge of each grip tang. See Figure 1 as follows:

BILLING CODE 4910–13–P

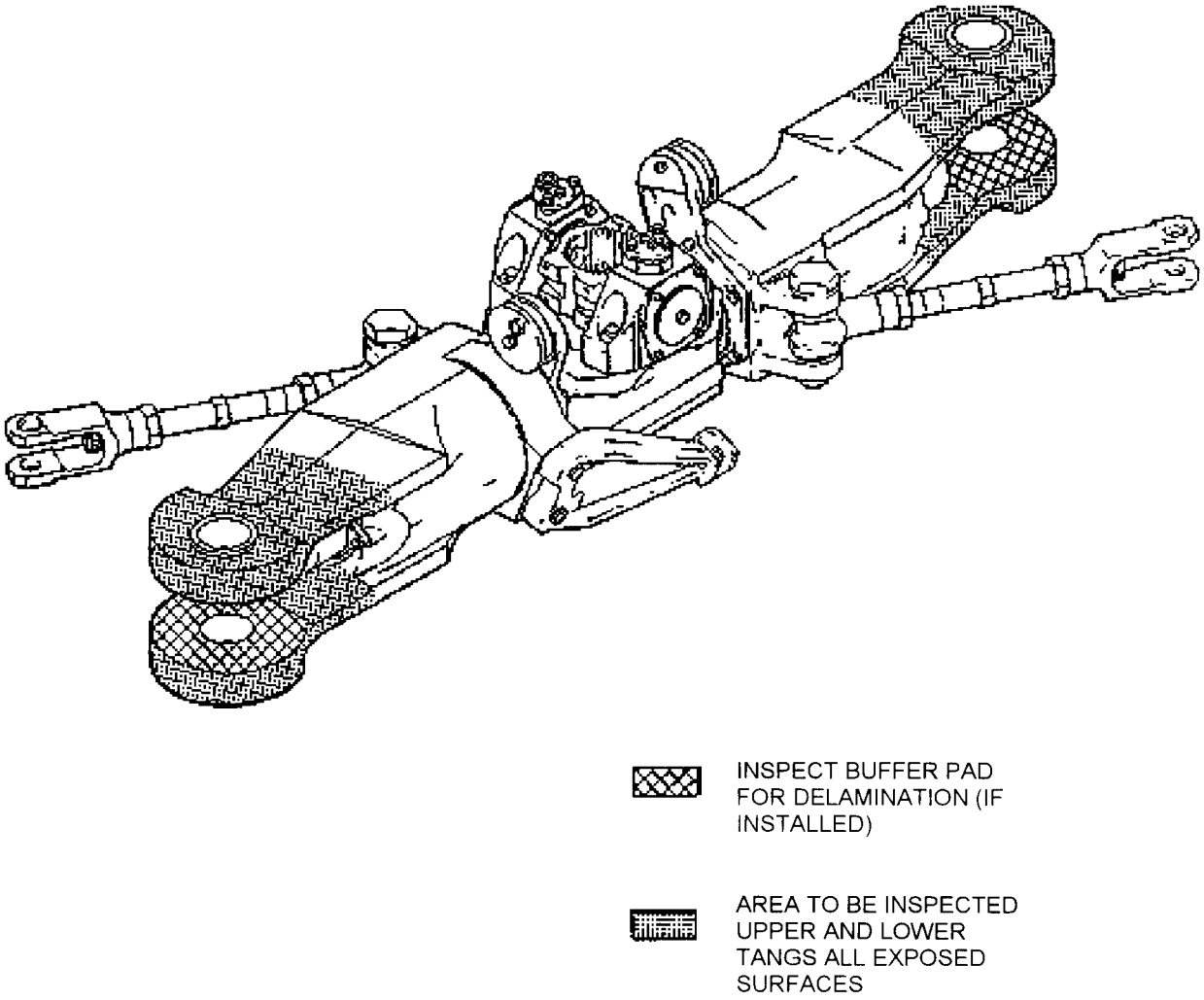

Figure 1. Inspection of Main Rotor Hub Grip Tangs

(c) Ultrasonic (UT) inspect each grip shown in the following table of this AD in accordance with the Bell Helicopter Textron, Inc. (BHTI) Nondestructive Inspection Procedure, Log No. 00–340, Revision E, dated April 9, 2002.

TABLE 1

UT Inspect Grip P/N	Within 30 days, for a Grip with the following or more hours TIS	Thereafter, at intervals not to exceed the following hours TIS or the engine start/stop cycles, whichever occurs first	
		Hours TIS	Engine start/stop cycles
(1) 204–011–121–009	4000	400	1600
(2) 204–011–121–121	500	150	600
(3) 204–011–121–005, or –113 if the grip was EVER installed on a Model 205B helicopter	4000	400	1600
(4) 204–011–121–117 if the grip was NEVER installed on a Model 205B helicopter	4000	150	600
(5) 204–011–121–117 if the grip was EVER installed on a Model 205B helicopter	500	150	600
(6) 204–011–121–009 if the grip is installed on a Model 205A–1 helicopter modified in accordance with STC SH5132NM	4000	400	1600
(7) 204–011–121–121 if the grip is installed on a Model 205A–1 helicopter modified in accordance with STC SH5132NM	500	150	600

The UT inspection of the grip must be performed by a Non-Destructive Testing (NDT) UT Level I Special, Level II, or Level III inspector who is qualified under the guidelines established by MIL–STD–410E, ATA Specification 105, AIA–NAS–410, or an FAA-accepted equivalent for qualification standards of NDT Inspection/Evaluation Personnel.

Note 2: You can find the Nondestructive Inspection Procedure attached to BHTI Alert Service Bulletin (ASB) 205B–02–39, Revision B, dated November 22, 2002, or BHTI ASB 212–02–116, Revision A, dated October 30, 2002.

(d) At intervals not to exceed 1200 hours TIS or 24 months, whichever occurs first:

(1) Remove each main rotor blade, and

(2) Inspect each grip buffer pad on the inner surfaces of each grip tang for delamination (see Figure 1 of this AD). If there is any delamination, remove the buffer pad and inspect the grip surface for corrosion or other damage.

Note 3: This inspection interval coincides with the main rotor tension-torsion strap replacement times.

(e) Within 2400 hours TIS or at the next overhaul of the main rotor hub, whichever occurs first, and thereafter at intervals not to exceed 2400 hours TIS:

(1) Remove each main rotor blade.

(2) Remove each grip buffer pad (if installed) from the inner surfaces of each grip tang.

(3) Inspect the grip surfaces for corrosion or other damage.

(4) Fluorescent-penetrant inspect (FPI) the grip for a crack, paying particular attention to the upper and lower grip tangs. When inspecting grips, P/N 204–011–121–005, –09, and –113, pay particular attention to the leading and trailing edges of the grip barrel.

Note 4: FPI procedures are contained in BHTI's Standard Practices Manual, BHT–ALL–SPM.

(f) Before further flight:

(1) Replace with an airworthy grip any grip with a crack.

(2) Replace with an airworthy grip or repair, if within maximum repair damage limits, any grip with any corrosion or other damage.

Note 5: The maximum repair damage limitations are found in the applicable Component and Repair Overhaul Manual.

Note 6: BHTI Operations Safety Notice 204–85–6, 205–85–9 and 212–85–13, all dated November 14, 1985, and BHTI ASB 212–94–92, Revision A, dated March 13, 1995, also pertain to the subject of this AD.

(g) Within 24 hours for any grip found with a crack and within 7 days for any grip inspected per paragraph (e) of this AD, report to the FAA Rotorcraft Certification Office the information requested in Appendix 1 to this AD. The information collection requirements of this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(i) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(j) The inspections shall be done in accordance with the Bell Helicopter Textron Nondestructive Inspection Procedures of Log No. 00–340, Rev. E, dated April 9, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on January 30, 2003.

Appendix 1 to AD 2003–01–04

AD Compliance Inspection Report (Sample Format)

Provide the following information and mail or fax it to: Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193–0170, USA, Fax: 817–222–5783.

Aircraft Registration No:
Helicopter Model:
Helicopter Serial Number:

Owner and Operator of the Helicopter:
Contact Phone Number:
Grip Part Number:
Grip Serial Number:
Grip Total Hours Time-in-Service (TIS) at Inspection:
Grip Hours TIS since Overhaul:
Grip Start/Stop Cycles and Associated Hours TIS since Last Reported:

Description of Findings

Who performed the inspection?

Date and location the inspection was performed:

Crack Found (Y/N)? If yes, describe the crack size, location, orientation (provide a sketch or pictures with the grip part and serial numbers).

Which inspection was being performed when the crack was discovered?

Has the grip ever been installed on another model helicopter? If so, provide the models and associated hours.

Provide any other comments.

Issued in Fort Worth, Texas, on December 31, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–328 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–34–AD; Amendment 39–13017; AD 2003–02–01]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L–2, ALF502L–2C, ALF502R–3 and ALF502R–3A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L–2, ALF502L–2C, ALF502R–3 and ALF502R–3A series turbofan engines. This action requires inspection of the flow divider primary, secondary, and drain tube assemblies for security and proper clamping. This amendment is prompted by a fire in the engine nacelle of an ALF502L–2C powered airplane caused by fracture of the flow divider left primary fuel tube, due to high-cycle fatigue resulting from a missing support clamp. The actions specified in this AD are intended to prevent fire in the engine nacelle, in-flight shutdown, and possible damage to the engine.

DATES: Effective January 30, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *''9-ane-adcomment@faa.gov''*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003, telephone: (602) 365–2493; fax: (602) 365–5577. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office (LAACO), FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has been informed that a Bombardier CL–600 airplane powered by ALF502L–2C engines had a fire in the nacelle of the number one engine, resulting from fracturing of the flow divider left primary fuel tube. The fracture was due to high-cycle fatigue caused by a missing support clamp. This action mandates inspection of the flow divider primary, secondary, and drain tube assemblies for security and proper clamping. The actions specified in this AD are intended to prevent fire in the engine nacelle. This condition, if not corrected, could result in an in-flight shutdown and possible damage to the engine.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Honeywell Alert Service Bulletin (ASB) ALF/LF A73–1013, dated October 18, 2002, that describes procedures for inspection of the flow divider primary, secondary, and drain tube assemblies for security and proper clamping.

Differences Between This AD and the Manufacturer's Service Information

Although Honeywell ASB ALF/LF A73–1013 requires compliance within 75 hours after receipt of the service bulletin, this AD requires compliance within 100 flight hours after the effective date of this AD, allowing operators more time to schedule and perform inspections.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L–2, ALF502L–2C, ALF502R–3 and ALF502R–3A series turbofan engines, this AD is being issued to prevent fire in the engine nacelle, in-flight-shutdown, and possible damage to the engine. This AD requires inspection of the flow divider primary, secondary and drain tube assemblies for security and proper clamping. The actions are required to be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–34–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–02–01 Honeywell International, Inc.: Amendment 39–13017. Docket No. 2002–NE–34–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) ALF502L–2, ALF502L–2C, ALF502R–3 and ALF502R–3A series turbofan engines with tube assemblies, part numbers 2–193–340–02, 2–173–600–03, 2–173–110–02, 2–173–120–03, and 2–193–350–02 installed. These engines are installed on, but not limited to Bombardier CL–600–1A11 and BAE Systems BAe146–100A, –200A and –300A series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done. To prevent fire in the engine nacelle, in-flight shutdown, and possible damage to the engine, do the following:

One-time Inspection of Flow Divider Tube Assemblies

(a) Within 100 flight hours after the effective date of this AD, inspect the flow divider primary, secondary, and drain tubes for proper clamp installation, in accordance with Paragraph 2.A.(1) and 2.A.(2) of the Accomplishment Instructions of Honeywell International, Inc. Alert Service Bulletin ALF/LF A73–1013, dated October 18, 2002.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(d) The inspection must be done in accordance with Honeywell Alert Service Bulletin ALF/LF A73–1013, dated October 18, 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), Attn: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003, telephone: (602) 365–2493; fax: (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 30, 2003.

Issued in Burlington, Massachusetts, on January 6, 2003.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–643 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30348; Amdt. No. 3039]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are

needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new organizational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 15, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 15, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form document which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA forms 8360–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 3, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulation (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAQV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAP, identified as follows:

** * * Effective February 20, 2003*

Covington, LA, Greater St. Tammany, VOR/DME–A, Orig (CANCELLED)

Covington, LA, Greater St. Tammany, GPS RWYA 17, Orig-A (CANCELLED)

** * * Effective February 20, 2003*

Danielson, CT, Danielson, RNAV (GPS) Rwy 31, Orig (CANCELLED)
Huntington, IN, Huntington Muni, VOR/DME–A, Amdt 1
Huntington, IN, Huntington Muni, NDB RWY 9, Amdt 1
Huntington, IN, Huntington Muni, RNAV (GPS) RWY 9, Orig
Huntington, IN, Huntington Muni, RNAV (GPS) RWY 27, Orig
Huntington, IN, Huntington Muni, GPS RWY 9, Amdt 1, (CANCELLED)
Huntington, IN, Huntington Muni, GPS RWY 27, Orig, (CANCELLED)
Wichita, KS, Beech Factory, RNAV (GPS) Rwy 18, Orig (CANCELLED)
Wichita, KS, Beech Factory, RNAV (GPS) Rwy 36, Orig
Wichita, KS, Beech Factory, RNAV (GPS) Rwy 18, Orig
Wichita, KS, Beech Factory, GPS Rwy 36, Orig (CANCELLED)
Leesville, LA, Leesville, NDB RWY 36, Amdt 1
Leesville, LA, Leesville, RNAV (GPS) RWY 36, Orig
Owosso, MI, Owosso Community, RNAV (GPS) RWY 10, Orig
Sikeston, MO, Sikeston Memorial Muni, NDB RWY 20, Amdt 8A (CANCELLED)
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, LOC BC RWY 15R, Amdt 11A (CANCELLED)
Lake Geneva, WI, Grand Geneva Resort, RNAV (GPS) RWY 23, Orig

[FR Doc. 03–650 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR part 390

[Docket No. RM02–10–000; Order No. 891]

Electronic Registration

December 20, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of extension of effective date.

SUMMARY: The Federal Energy Regulatory Commission is extending the effective date of its requirement that users of its online applications register electronically. This extension is necessary because the eRegistration system will not be sufficiently implemented by the original effective date of January 7, 2003.

FOR FURTHER INFORMATION CONTACT:
Christopher Cook (information technology advisor), Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8102.
Wilbur Miller (legal advisor), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953.

1. On August 5, 2002, the Commission issued Order No. 891, establishing a system of electronic registration to act as a gateway to its online services.[1] The eRegistration system will allow users to input identifying information only once as a precursor to using services such as electronic filing, electronic subscription, or electronic service. The registration system has been available on the Commission's web site, *http://www.ferc.gov*, since September as a voluntary system. Order No. 891 provided that eRegistration would become mandatory on January 7, 2003.[2]

2. Currently, eRegistration is not fully integrated with the online services with which it will operate, and this was expected to be the case on the original effective date. The Commission thus will extend the effective date until adequate integration is achieved. Once the system is ready, the Secretary of the Commission will issue a notice of the time when the eRegistration requirement will become effective. In the interim, eRegistration may be a prerequisite for the use of some informational services, such as electronic subscription.

The Commission orders: The effective date of 18 CFR 390.1 is extended until the new effective date is announced by the Secretary.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–834 Filed 1–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–2361

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim rule and request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) is designating two pharmaceutical preparations as exempt anabolic steriod products under the Controlled Substances Act. This action is part of the ongoing implementation of the Anabolic Steriod Control Act of 1990.

DATES: *Effective date:* January 15, 2003.

Comment date: Comments must be received on or before March 17, 2003.

ADDRESSES: Comments must be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT:
Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

The Anabolic Steroids Control Act (ASCA) of 1990 (title XIX of Pub. L. 101–647) placed anabolic steroids into schedule III of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). Section 1903 of the ASCA provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) if the products have no significant potential for abuse. The authority to exempt these products was delegated from the Attorney general to the Administrator of the Drug Enforcement Administration (28 CFR 0.1009b)), who, in turn, redelegated this authority to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (28 CFR appendix to subpart R, section 7, paragraph (g)). The procedure for implementing this section of the ASCA is found in § 1308.33 of title 21 of the Code of Federal Regulations. An application which was in conformance with § 1308.33 of title 21 of the Code of Federal regulations was received and was forwarded to the Secretary of Health and Human Services for his evaluation. The purpose of this rule is to identify two products which the Deputy Assistant Administrator, Office of Diversion Control, finds meet the exempt anabolic steroid product criteria.

Anabolic Steroid Products Being Added to the List of Products Exempted From Application of the CSA

DEA received a letter dated June 18, 2002, written tot he DEA on behalf of Syntho Pharmaceuticals Inc., and two

[1] See 18 CFR part 390 (2001).

[2] FERC Stats. & Regs. ¶ 31,132, at p. 30,195 (2002), codifying requirement at 18 CFR § 390.1.

petitions to exempt from control under the CSA a two products each containing esterified estrogens and methyltestosterone. In a letter dated July 16, 2002, DEA provided a copy of these petitions to the Department of Health and Human Services (HHS) along with a request for evaluation and recommendation. In a letter dated September 14, 2002, the Assistant Secretary of Health for HHS recommended that both Syntest H.S. and Syntest D.S. be exempted from controls under the CSA based on their similarity to the products, Estratest H.S. and Estratest, respectively, both of which have been exempted from control under the CSA. A subsequent examination of DEA databases did not reveal any evidence of abuse or diversion of Estratest H.S. and Estratest.

The Deputy Assistant Administrator, having reviewed the application, recommendation of the Secretary, and other relevant information, finds that Syntest H.S. and Syntest D.S. have no significant potential for abuse. Information on these products is given below.

EXEMPT ANABOLIC PRODUCTS

Trade name	Company	Form	Ingredients	Quantity
Syntest H.S	Syntho Pharmaceuticals, Farmingdale, NY.	Tablets	Esterfied Estrogrens	0.62mg/Tablet.
			Methylestosterone	1.25mg/Tablet.
Syntest D.S	Syntho Pharmaceuticals, Farmingdale, NY.	Tablets	Esterfied Estrogrens	1.25mg/Tablet.
			Methylestosterone	2.5mg/Tablet.

Therefore, the Deputy Assistant Administrator hereby orders that the above anabolic steroid products be added to the list of products excluded from application of the CSA and referenced in 21 CFR 1308.34

Interested persons are invited to submit their comments in writing with regard to this interim rule. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant Administrator shall immediately suspend the effectiveness of this order until she may reconsider the application in light of the comments and objections filed. Thereafter, the Deputy Assistant Administrator shall reinstate, revoke, or amend her original order as she determines appropriate.

Regulatory Certifications

Regulatory Flexibility Act

The granting of exemption status relieves persons who handle the exempted products in the course of legitimate business from the registration, record keeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will not have a significant economic impact upon a substantial number of small entities whose interest must be considered under the Regulatory Flexibility Act. (5 U.S.C. 605(b)).

Executive Order 12866

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12866. Accordingly, this action is not subject to those provisions of Executive Order 12l778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a ''major rule,'' as that term is used in Executive Order 12866, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of Executive Order 12788.

Executive Order 12988

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This interim rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own law. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This interim rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: January 6, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–772 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2003. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2003, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2003, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.10 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for January 2003) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for January 2003) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 112, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
112	2–1–03	3–1–03	3.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 112, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
112	2–1–03	3–1–03	3.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t=
*	*	*	*	*	*	*
February 2003	.0510	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of January 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–829 Filed 1–14–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 02–156]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing security zones in the Captain of the Port Miami area for national security reasons to protect the public and ports from potential subversive acts. Similar security zones have been in effect under temporary rules following the terrorist attacks of September 11, 2001, on the World Trade Center and Pentagon. Entry into these zones will be prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: This rule is effective from December 16, 2002 until 11:59 p.m. on February 15, 2003.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of (COTP Miami-02–156) and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jennifer Sadowski, Waterways Management Division Officer, Coast Guard Marine Safety Office Miami, at (305) 535–8750.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. We did publish a NPRM on November 5, 2002 (67 FR 67342) proposing to make these same security zones permanent. The comment period for the NPRM closed on December 5, 2002 and this temporary rule will ensure vessels are protected while we draft the final rule.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and place enforcement vessels in the vicinity to advise mariners of the restriction.

Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly around those vessels and facilities which are frequented by foreign nationals and maintain an interest to national security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sep. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sep. 20, 2002) (continuing national emergency

with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorist attacks are likely. The Captain of the Port (COTP) of Miami has determined that there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida. These security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

The Coast Guard Captain of the Port of Miami established temporary security zones in these areas following the September 11, 2001 attacks. Those temporary rules are as follows:

On September 11, 2001, the COTP issued a temporary final rule (TFR) (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01–093) establishing 100-yard security zones around certain vessels in the Port of Palm Beach, Miami, Port Everglades, and Key West, FL, that expired September 25, 2001. On September 25, 2001, the COTP issued another TFR (67 FR 1101, January 9, 2002, COTP Miami 01–115) that maintained these 100-yard security zones around certain vessels in the Ports of Palm Beach, Miami, Port Everglades, and Key West, FL, and added a reference to specific points (buoys) where moving zones were activated and deactivated. This second TFR expired on June 15, 2002.

On October 7, 2001, the COTP issued a TFR (67 FR 6652, February 13, 2002, COTP Miami 01–116) establishing fixed security zones in Port Everglades and Miami, FL, that expired June 15, 2002.

On October 11, 2001, the COTP issued a TFR (67 FR 4177, January 29, 2002, COTP Miami 01–122) establishing a fixed-security zone for Port Everglades, FL, that expired June 15, 2002.

All of the above security zones were extended by a TFR issued on June 13, 2002 (67 FR 46389, COTP Miami-02-054) until December 15, 2002. On November 5, 2002, we published a NPRM proposing to create permanent security zones in various ports throughout South Florida (67 FR 67342). We received one comment on the proposed rule. This temporary rule is necessary to ensure vessels are protected while we complete drafting the final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because we anticipate these security zones may only impact vessel traffic for short periods of times. Alternate vessel traffic routes have also been accounted for to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels to enter a security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because we anticipate these security zones may only impact vessel traffic for short periods of times. Alternate vessel traffic routes have also been identified to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels to enter a security zone on a case-by-case basis. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Jennifer Sadowski at (305) 535–8750.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because no environmental changes will be affected with the security zone implementation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.T07–156 to read as follows:

§ 165.T07–156 Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida.

(a) *Location.* The following areas are security zones:

(1) *Fixed and moving security zones around vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West, Florida.* Moving security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: ''LW'' buoy, at approximate position 26°46.3′ N, 080°00.6′ W, when entering the Port of Palm Beach, passes ''PE'' buoy, at approximate position 26°05.5′ N, 080°04.8′ W, when entering Port Everglades; the ''M'' buoy, at approximate position 25°46.1′ N, 080°05.0′ W, when entering the Port of Miami; and ''KW'' buoy, at approximate position 24°27.7′ N, 081°48.1′ W, when entering the Port of Key West. Fixed security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard or liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, while they are docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(2) *Fixed security zone in the Port of Miami, Florida.* A fixed security zone encompasses all waters between Watson Park and Star Island on the MacArthur Causeway south to the Port of Miami. The western boundary is formed by an imaginary line from points 25°46.79′ N, 080°10.90′ W, to 25°46.77′ N, 080°10.92′ W to 25°46.88′ N, 080°10.84′ W, and ending on Watson Park at 25°47.00′ N, 080°10.67′ W. The eastern boundary is formed by an imaginary line from the traffic light located at Bridge Road, in approximate position 25°46.33′ N, 080°09.12′ W, which leads to Star Island, and MacArthur Causeway directly extending across the Main Channel to the Port of Miami, at 25°46.26′ N, 080°09.18′ W. The fixed security zone is activated when two or more passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, enter or moor within this zone.

(i) Vessels may be allowed to transit the Main Channel when only one passenger vessel or vessel carrying cargoes of particular hazard are berthed, by staying on the north side of the law enforcement boats and cruise ship tenders which will mark a transit lane in channel.

(ii) When passenger vessels are not berthed on the Main Channel, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed security zones in the Port Everglades.* A fixed security zone encompasses all waters west of an imaginary line starting at the northern most point 26°05.98′ N, 080°07.15′ W, near the west side of the 17th Street Causeway Bridge, to the southern most point 26°05.41′ N, 080°06.96′ W, on the northern tip of pier 22. An additional fixed security zone encompasses the Intracoastal Waterway between a line connecting point 26°05.41′ N, 080°06.97′ W, on the northern tip of berth 22 and a point directly east across the Intracoastal Waterway to 26°05.41′ N, 080°06.74′ W; and a line drawn from the corner of Port Everglades berth 29 at point 26°04.72′ N, 080°06.92′ W, easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area at point 26°04.72′ N, 080°06.81′ W.

(i) Vessels may be allowed to transit the Intracoastal Waterway when passenger vessels or vessels carrying cargoes of particular hazard are berthed, by staying east of the law enforcement boats and cruise ship tenders, which will mark a transit lane in the Intracoastal Waterway.

(ii) Periodically, vessels may be required to temporarily hold their positions while large commercial traffic operates in this area. Vessels in this security zone must follow the orders of the COTP or his designated representative, who may be embarked in law enforcement or other vessels on scene. When passenger vessels are not berthed on the Intracoastal Waterway, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(b) *Regulations.* (1) Prior to commencing the movement, the person directing the movement of a passenger vessel, a vessel carrying cargoes of particular hazard, or a vessel carrying liquefied hazardous gas (LHG) as defined in Title 33, Code of Federal Regulations parts 120, 126 and 127 respectively, is encouraged to make a security broadcast on VHF Marine Band Radio, Channel 13 (156.65 MHz) to

advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port Miami or his designated representative. Other vessels such as pilot boats, cruise ship tenders, tug boats and contracted security vessels may assist the Coast Guard Captain of the Port under the direction of his designated representative by monitoring these zones strictly to advise mariners of the restrictions. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 13 (156.65 MHz) when the security zones are being enforced.

(3) Persons desiring to enter or transit the area of the security zone may contact the Captain of the Port on VHF Marine Band Radio, Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(4) The Captain of the Port Miami may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for the purpose of port security, safety or environmental safety.

(c) *Definition.* As used in this section, cruise ship means a passenger vessel greater than 100 feet in length and over 100 gross tons that is authorized to carry more than 12 passengers for hire making voyages lasting more than 24 hours, except for a ferry.

(d) *Dates.* This section is effective from December 16, 2002 until 11:59 p.m. on February 15, 2003.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: December 16, 2002.

J.A. Watson, IV,

Captain, Coast Guard, Captain of the Port Miami.

[FR Doc. 03–740 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 140–1a; FRL–7433–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) conditionally approves rules, submitted by the State of Indiana as revisions to its State Implementation Plan (SIP), for Prevention of Significant Deterioration (PSD) provisions for attainment areas for the Indiana Department of Environmental Management (IDEM).

DATES: This rule will become effective March 3, 2003 unless EPA receives adverse written comments by February 14, 2003. If EPA receives adverse written comments, it will publish a timely withdrawal of the rule in the **Federal Register**, and inform the public that the rule will not take effect.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Julie Capasso at (312) 886–1426 before visiting the Region 5 office. Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Is the Purpose of This Document?

This document is our conditional approval of the SIP revision request that IDEM has submitted for its PSD program.

B. What Is the History of IDEM's PSD Program?

On September 30, 1980, EPA delegated to IDEM the authority to implement and enforce the federal PSD program. On April 11, 2001, IDEM submitted a request to EPA to revise its SIP to incorporate its PSD regulations. On February 1, 2002, IDEM submitted to EPA a revised request resolving issues identified by EPA during an informal review. IDEM withdrew the previous request on February 27, 2002. On May 28, 2002, EPA sent a letter to IDEM deeming the February 1, 2002 submittal complete, and initiated the processing of the request.

Indiana's February 1, 2002 submission consists of the addition to the SIP of: 326 IAC 2–2, PSD rules; 326 IAC 2–1.1–6, Public notice; and 326 IAC 2–1.1–8, Time periods for determination on permit applications. IDEM previously submitted sections 326 IAC 2–1.1–6 and 326 IAC 2–1.1–8, and at EPA's request, is resubmitting them as part of this SIP submittal request.

C. Who Is Affected by This Action?

Indiana has already adopted these PSD rules; therefore, air pollution sources will not be subject to any additional requirements. This action merely approves the State rules into the SIP, making them federally enforceable under the Clean Air Act (CAA). Because this is now a federally-approved State program instead of a delegated federal program, anyone wishing to appeal a PSD permit will have to do so under the State's environmental appeals process.

D. Approvability Analysis

I. 326 IAC 2–2–1: Definitions

Unless otherwise specified below, definitions in 326 IAC 2–2–1 are consistent with definitions in 40 CFR 51.166(b).

EPA has noted wording discrepancies between the Federal rules and the following rules: In 326 IAC 2–2–1(y)(5), the words ''and this subdivision'' are superfluous. In 326 IAC 2–2–1(gg), IDEM should replace ''U.S. EPA'' with ''IDEM'' in the following sentence: ''U.S. EPA shall give expedited consideration to permit applications * * *.'' In 326 IAC 2–2–6(b)(5), the words ''whichever is later'' are not necessary. These wording differences do not constitute approvability issues. IDEM agrees to

address them the first time that it reopens the rules.

The Federal definition of ''major modification'' excludes from a physical change or a change in the method of operation the use by a stationary source of an alternative fuel or raw material which the source was capable of accommodating before January 1, 1975, unless the change is prohibited under any permit condition established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166. 40 CFR Subpart I contains requirements pertaining to minor new source review permits. Indiana's rule 326 IAC 2–2–1(x)(2)(E)(i) provides that the use of an alternative fuel or raw material is a change in the method of operation if prohibited by a condition of a permit issued pursuant to the authority of the PSD or major new source review programs, but does not address other new source review provisions. The omission of the reference to minor new source review provisions in 326 IAC 2–2–1(x)(2)(E)(i) was inadvertent. Indiana is not aware of any new source review permits that were not issued pursuant to PSD or major new source review authority that contain restrictions on the use of an alternative fuel or raw material; however, Indiana agrees to address this inadvertent omission within one year of the effective date of this conditional approval.

II. 326 IAC 2–2–6: Increment Consumption

326 IAC 2–2–6(a) only allows a source or major modification to consume 80% of the maximum increase allowed in the 40 CFR 51.166(c). The State's increment consumption requirements are more stringent than the Federal rule, and are therefore approvable.

III. 326 IAC 2–2–12: Permit Rescission

326 IAC 2–2–12 provides that sources may request that IDEM rescind requirements in permits issued prior to January 1, 2002. The comparable federal rule, 40 CFR 52.21(w)(2), provides for rescission of terms from permits issued prior to August 7, 1987. The Federal provision relates to the transition between Total Suspended Particulate (TSP) and particulate matter with an aerodynamic diameter of 10 microns or less (PM–10). IDEM has informed EPA that it interprets 326 IAC 2–2–12 to be consistent with 40 CFR 52.21(w) in that it would only consider use of this subsection to rescind conditions related to TSP. Therefore, EPA believes that these provisions are approvable.

E. What Is Today's Final Action?

EPA is conditionally approving the following rules because with the exception of the inadvertent omission of minor new source review permits from the exemption to the definition of ''major modification,'' the following sections of the State's Rules are consistent with EPA's regulations at 40 CFR 51.166:326 IAC 2–2–2, Applicability; 326 IAC 2–2–3, Control technology; 326 IAC 2–2–4, Air quality analysis; 326 IAC 2–2–5, Air quality impact; 326 IAC 2–2–7, Additional analysis; 326 IAC 2–2–8, Source obligation; 326 IAC 2–2–9, Innovative control technology; 326 IAC 2–2–10, Source information; 326 IAC 2–2–11, Stack height provisions; 326 IAC 2–2–13, Area designation and redesignation; 326 IAC 2–2–14, Sources impacting Federal Class I areas: Additional requirements; 326 IAC 2–2–15, Public participation; 326 IAC 2–2–16, Ambient air ceilings; 326 IAC 2–1.1–6, Public notice, and 326 IAC 2–1.1–8, Time periods for determination on permit applications. Because it is unlikely that Indiana has limited the ability of any sources to use alternative fuels or raw materials through a minor new source review permit, and because Indiana has committed in a December 12, 2002 letter to correct this minor deficiency within one year of the effective date of this approval, EPA believes that it is appropriate to grant conditional approval. However, should Indiana fail to correct this deficiency within a year of this action, EPA will initiate withdrawal of this approval. Although EPA is approving Indiana's PSD SIP, EPA emphasizes that it has a responsibility to insure that all states properly implement their preconstruction permitting programs. EPA's approval of Indiana's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, EPA regulations and the SIP.

Today's approval of Indiana's SIP revision submission is limited to existing rules. EPA is taking no position on whether Indiana will need to make changes to its new source review rules to meet any requirements that EPA may promulgate as part of new source review reform.

EPA is publishing this direct final conditional approval of the Indiana PSD SIP submitted on February 1, 2002. We view this action as noncontroversial, and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to withdraw the State Plan should adverse or critical written comments be filed. This approval action will be effective without further notice unless EPA receives relevant adverse written comment by February 14, 2003. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 3, 2003.

F. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 18, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-*et seq.*

2. Section 52.770 is amended by adding (c)(147) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(147) On February 1, 2002, Indiana submitted its Prevention of Significant Deterioration rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code, Rules 2–2–1, 2–2–2, 2–2–3, 2–2–4, 2–2–5, 2–2–6, 2–2–7, 2–2–8, 2–2–9, 2–2–10, 2–2–11, 2–2–12, 2–2–13, 2–2–14, 2–2–15 and 2–2–16. Filed with the Secretary of State on March 23, 2001, effective April 22, 2001.

(B) Title 326 of the Indiana Administrative Code, Rules 2–1.1–6 and 2–1.1–8. Filed with the Secretary of State on November 25, 1998, effective December 25, 1998. Errata filed with the Secretary of State on May 12, 1999, effective June 11, 1999.

* * * * *

[FR Doc. 03–616 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD137–3090a; FRL–7420–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revision to the Control of Volatile Organic Compound Emissions From Screen Printing and Digital Imaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). The revision consists of the establishment of reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from an overprint varnish that is used in the cosmetic industry. The revision also adds new definitions and amends certain existing definitions for terms used in the regulation. EPA is approving this revision to the State of Maryland SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on March 17, 2003, without further notice, unless EPA receives adverse written comment by February 14, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Walter Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 1999, the Maryland Department of the Environment (MDE) submitted a formal revision to its State Implementation Plan (SIP) revising the Code of Maryland Administrative Regulation (COMAR) 26.11.19.18, Control of Volatile Organic Compound Emissions from Screen Printing. This revision amended the previous

regulation .18 by adding RACT standards for VOC emissions from digital imaging operations throughout the state. The same limits for screen printing from the previous screen printing regulation were retained (62 FR 53544, October 15, 1997). The February 12, 1999, submittal also revised Maryland's screen printing regulations to eliminate expired interim dates and limits, and repealed the existing sections B–I, and added new sections B–G. A definition for the term ''digital imaging'' was also added to the rule. This regulation was adopted by MDE on August 4, 1998, and became effective on August 24, 1998. EPA approved MDE's revision to its screen printing and digital imaging regulation on June 17, 1999 (64 FR 32415).

II. Summary of SIP Revision

On June 21, 2002, MDE submitted a formal revision to its SIP revising COMAR 26.11.19.18, Control of Volatile Organic Compound Emissions from Screen Printing and Digital Imaging, section C, General Requirements for Screen Printing. This revision establishes a VOC limit for overprint varnish. Overprint varnish is a FDA-regulated coating that is used by the cosmetic industry to prevent lipstick from adhering to the plastic film on sample cards sold to retail stores. Specifically, this SIP revision establishes a maximum VOC content, as applied, for overprint varnish on any substrate, of 6.03 pounds of VOC per gallon. All of the previous limits in Maryland's existing screen printing regulation have been retained. As a result, COMAR 26.11.19.18C(1)(a)–(c) has been renumbered as COMAR 26.11.19.18C(1)(b)-(d) to reflect the addition of the new requirement. This SIP revision also amends the definitions section of this rule, COMAR 26.11.19.18A, by adding a definition for the term ''Overprint varnish'' at COMAR 26.11.19.18A(10–1), and revising the current definition of ''Clear coating'' at COMAR 26.11.19.18A(4)(a) and (b) for clarification purposes.

The CAA requires each revision to a state implementation plan to be reviewed to make sure that the revision does not interfere with any applicable requirements concerning reasonable further progress (ROP) and attainment. Currently, there is one source, the Color Prelude Company, located in Anne Arundel County, Maryland, that will be affected by this revision. Growth projections for emissions from this category have been accounted for in the Maryland ROP and attainment demonstration. EPA has concluded that this regulation will not negatively impact any ROP or attainment demonstration of the ozone national ambient air quality standard (NAAQS) previously submitted by the State of Maryland, and is therefore approvable as a revision to the Maryland SIP.

III. Final Action

EPA is approving a revision to the State of Maryland SIP which was submitted on June 21, 2002, by the Maryland Department of the Environment (MDE) establishing a state-wide VOC limit to control emissions from an overprint varnish that is used in the cosmetic industry, and adds and revises definitions for terms used in the regulation. All previously approved screen printing and digital imaging requirements have been retained.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 17, 2003, without further notice unless EPA receives adverse comment by February 14, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, establishing a VOC limit for an overprint varnish that is used in screen printing by the cosmetic industry in Maryland, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(177) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(177) Revisions to the Code of Maryland Administrative Regulation (COMAR) 26.11.19.18 pertaining to the establishment of a VOC limit for overprint varnish used in the cosmetic industry, submitted on June 21, 2002, by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 21, 2002, from the Maryland Department of the Environment transmitting amendments to Regulation .18, Control of Volatile Organic Compound Emissions from Screen Printing and Digital Imaging, under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes.

(B) Additions and Revisions to COMAR 26.11.19.18, Control of Volatile Organic Compound Emissions from Screen Printing and Digital Imaging under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes, effective June 10, 2002:

(*1*) Revised COMAR 26.11.19.18A(4)(a) and added COMAR 26.11.19.18A(4)(b), revising the definition of the term ''Clear coating.''

(*2*) Added COMAR 26.11.19.18A (10–1), adding a definition for the term ''Overprint varnish.''

(*3*) Added COMAR 26.11.19.18C(1)(a) (General Requirements for Screen Printing). Former COMAR 26.11.19.18C(1)(a) through (c) is renumbered as 26.11.19.18C(1)(b) through (d).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(177)(i) of this section.

[FR Doc. 03–729 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MD–T5–2002–01a; FRL–7440–2]

Clean Air Act Full Approval of Operating Permit Program; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final full approval.

SUMMARY: The EPA is taking final action to grant full approval of the State of Maryland's operating permit program. Maryland's operating permit program was submitted in response to the Clean Air Act Amendments of 1990 that required each state to develop, and submit to EPA, a program for issuing operating permits to all major stationary sources and to certain other sources within the state's jurisdiction. The EPA granted final interim approval of Maryland's operating permit program on July 3, 1996. The State of Maryland amended its operating permit program to address the deficiencies identified in the final interim approval action, and this final rulemaking action approves those amendments. The EPA proposed full approval of Maryland's operating permit program in the **Federal Register** on September 10, 2002. This final rulemaking summarizes the comments EPA received on the September 10, 2002 proposal, provides EPA's responses, and promulgates final full approval of the State of Maryland's operating permit program.

DATES: This final rule is effective on February 14, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at *campbell.dave@.epa.gov*.

SUPPLEMENTARY INFORMATION: On July 15, 2002, the State of Maryland submitted amendments to its State operating permit program. These amendments are the subject of this document and this section provides additional information on the amendments by addressing the following questions:

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all states to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the states require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its

applicable Clean Air Act requirements into a federally enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the state environmental agency can more easily understand what Clean Air Act requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the Clean Air Act or in the EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the Clean Air Act; or those that emit or have the potential to emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, EPA granted interim approval contingent upon the state revising its program to correct the deficiencies. Because the Maryland operating permit program substantially, but not fully, met the requirements of part 70, EPA granted final interim approval of Maryland's program in a rule promulgated on July 3, 1996 (61 FR 34733). The interim approval notice described the conditions that had to be met in order for the Maryland operating permit program to receive full approval. Initially, Maryland's interim approval period, during which it was required to address its interim approval deficiencies, was scheduled to lapse two years after the effective date of the final interim approval action. However, EPA extended the interim approval period until December 1, 2001 for 86 operating permit programs, including Maryland's, in a rule promulgated on May 22, 2000 (65 FR 32035).

Maryland was unable to fully address each of the conditions it had to meet in order to be considered for full approval by December 1, 2001. Therefore, Maryland's interim approval has lapsed and the State has suspended its implementation of an approved program pursuant to 40 CFR part 70. Lapse of the part 70 program did not cause the State's operating permit program regulations to become disapproved or rescinded, although Maryland has not implemented or enforced these provisions during the period of the lapse. On December 5, 2001 (66 FR 63236), EPA announced that the 40 CFR part 71 federal operating permit program became effective in Maryland on December 1, 2001. In that same announcement, EPA granted full delegation to Maryland to implement and enforce the 40 CFR part 71 program. The 40 CFR part 71 program will be effective in Maryland until the State is granted final full approval of its program.

On July 15, 2002, Maryland submitted to EPA amendments to its title V operating permit program. These amendments are intended to correct deficiencies identified by EPA when it granted final interim approval of Maryland's program in 1996. In addition, Maryland also made revisions to its operating permit program since its program received final interim approval in 1996. The revisions were not intended to address any of the identified interim approval deficiencies. Rather, the intent of these discretionary program changes was to improve implementation of the existing program. The approval of the discretionary program revisions is not necessary in order for Maryland to adequately address its interim approval deficiencies, nor must they be approved prior to Maryland receiving full approval.

The EPA proposed final full approval of Maryland's operating permit program on September 10, 2002 (67 FR 57496). On October 10, 2002, EPA received comments from Earthjustice pursuant to the September 10, 2002 notice of proposed rulemaking granting final full approval of Maryland's operating permit program.

It should be noted that in response to a separate, earlier action, Earthjustice provided EPA with comments regarding Maryland's permit program. As discussed above, in May 2002 EPA extended the interim approval period for Maryland, among others, until December 1, 2001. The extension was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice. That notice was published on December 11, 2000 (65 FR 77376).

In response to the December 11, 2000 notice, EPA received a March 12, 2001 letter from Earthjustice identifying what it believed to be deficiencies with respect to the Maryland title V program. The EPA notified Earthjustice in a letter dated December 14, 2001 that the Agency would not respond to Earthjustice's March 12, 2001 comments at that time but that EPA would consider the comments and provide a written response to each comment at a later date.

In its September 10, 2002 **Federal Register** notice proposing to fully approve Maryland's operating permit program, EPA stated that we did not intend to take formal action on Earthjustice's March 12, 2001 comment letter in any final rulemaking action pertaining to the final full approval. In the proposed rulemaking notice, EPA announced that it would publish a notice of deficiency (NOD) pursuant to 40 CFR 70.4(i) and 70.10(b) when we determine that a deficiency exists, or we will notify the commenter, in writing, to explain our reasons for not making a finding of deficiency.

On September 23, 2002, EPA formally responded to Earthjustice's March 12, 2001 comments. In our response, we explain that we did not agree with the Earthjustice's assertions and detail our reasons for not issuing a notice of deficiency with regard to Maryland's program. In the near future, a notice of availability will be published in the **Federal Register** notifying the public that we have responded, in writing, to these comments and how the public may obtain a copy of our responses. The EPA's September 23, 2002 letter is currently available at the following web address: (*http://www.epa.gov/air/oaqps/permits/response/maryland.pdf*).

As mentioned above, on October 10, 2002, EPA received comments from Earthjustice pursuant to the September 10, 2002 notice of proposed rulemaking granting final full approval of Maryland's operating permit program. A number of the issue raised by Earthjustice are the same as those raised in its March 12, 2001 comment letter. The October 10, 2002 letter also raised a number of issues that previously had not been raised.

What Action Is Being Taken by EPA?

EPA is granting final full approval to Maryland's revised part 70 operating permits program. For the reasons discussed below, EPA's final full approval is based on Maryland's satisfactory correction of the nine program deficiencies identified when EPA granted final interim approval of Maryland's operating permit program on June 3, 1996, and it also includes other revisions that Maryland has made to improve its program since receiving interim approval. The operating permit program amendments submitted by Maryland on July 15, 2002, considered together with that portion of Maryland's operating permit program that was earlier approved on an interim basis fully satisfy the minimum requirements of 40 CFR part 70 and the Clean Air Act. Furthermore, EPA has determined that Earthjustice's October 10, 2002 comments relating to Maryland's interim approval deficiencies do not identify deficiencies in Maryland's part 70 program.

In addition, EPA is responding to Earthjustice's October 10, 2002 comments alleging other deficiencies in Maryland's part 70 program, including comments related to those first made by Earthjustice on March 12, 2001 and addressed in EPA's September 23, 2002 response and comments first raised on October 10, 2002. While EPA believes it is not obligated to respond to comments that do not pertain to interim approval deficiencies in this rulemaking, EPA has concluded that none of the concerns raised in those comments constitute deficiencies in the Maryland operating permit program. If a court should determine that EPA is obligated to respond to those additional comments in order to grant final full approval to Maryland's part 70 program, then the responses set forth in this notice should be considered EPA's final action in response to those comments.

What Were the Concerns Raised by the Commenters?

The EPA received one comment letter during the public comment period. In its October 10, 2002 letter, Earthjustice commented on the proper scope of EPA's full approval of Maryland's part 70 program. Earthjustice also commented on several specific aspects of Maryland's program, which can be grouped into three categories. First, Earthjustice commented on a number of the corrections Maryland made to its program in order to address the deficiencies that EPA previously determined must be corrected in order for the State to receive full approval of its program. These program deficiencies, called interim approval deficiencies, were identified when EPA granted final interim approval of Maryland's program in 1996. As discussed in the notice of proposed rulemaking, Maryland was required to address each of the nine deficiencies identified by EPA in order to be eligible for full approval of its program. Second, Earthjustice commented on a number of alleged deficiencies that it first raised in its March 12, 2001 letter and that EPA addressed in the Agency's September 23, 2002 response. Finally, Earthjustice provided comments alleging, for the first, time, that certain other issues constitute deficiencies in Maryland's program.

Earthjustice asserts that in order to fully approve Maryland's part 70 program, EPA must determine that the entire program complies with the Clean Air Act and part 70, and that EPA's proposal to grant full approval based solely on Maryland's correction of its interim approval deficiencies is inconsistent with section 502(d)(1) of the Clean Air Act, which authorizes EPA to approve a state operating permit program ''to the extent that the program meets the requirements of [the Clean Air Act and EPA's implementing regulations].'' Accordingly, Earthjustice asserts that EPA cannot grant full approval of Maryland's part 70 program without first addressing all alleged deficiencies identified by Earthjustice in its October 10, 2002 comment letter.

The EPA is aware that Earthjustice has alleged deficiencies other than those interim approval deficiencies listed in Maryland's June 3, 1996 final interim approval notice, and EPA agrees that those allegations must be addressed through appropriate actions by EPA and/or the State of Maryland. Indeed, EPA is responding to those allegations in this notice. For the reasons discussed below, however, we disagree that the deficiencies alleged in the October 10, 2001 comment letter that do not pertain to interim approval deficiencies prohibit EPA from granting full approval of Maryland's operating permit program at this time.

Title V of the Clean Air Act, 42 U.S.C. 7661–7661f, provides a framework for the development, submission and approval of state operating permit programs. Following the development and submission of a state program, the Act provides two different approval options that EPA may utilize in acting on state submissions. *See* 42 U.S.C. 7661a(d) and (g). Pursuant to section 502(d), EPA ''may approve a program to the extent that the program meets the requirements of [the Clean Air Act and implementing regulations].'' The EPA may act on such program submissions by approving or disapproving, in whole or in part, the state program. If a program is disapproved, section 502(d) requires the Administrator to notify the Governor of the State of ''any revisions or modifications necessary to obtain approval.''

An alternative option for acting on state programs is provided by the interim approval provision of section 502(g), which states: ''If a program . . . substantially meets the requirements of [title V], but is not fully approvable, the Administrator may by rule grant the program interim approval.'' This provision provides EPA with the authority to act on state programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submissions that meet the requirements of eleven key program areas are eligible to receive interim approval. *See* 40 CFR 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to ''specify the changes that must be made before the program can receive full approval.'' 42 U.S.C. 7661a(g); 40 CFR 70.4(e)(3). This explicit directive encompasses another, implicit one: Once a state with interim approval corrects the specified deficiencies then it will be eligible for full program approval. The EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant interim approval. Thus, the Clean Air Act clearly addresses initial title V program submissions by outlining the alternate mechanisms of sections 502(d) and 502(g). However, the statute does not specifically address Maryland's situation, where the State's interim approval has lapsed and the State has submitted a revised part 70 program, rather than an initial program.

The EPA believes that the interim approval provision, section 502(g), is not applicable to Maryland's current situation. Section 502(g) expressly provides that interim approval ''shall expire'' on a date certain and ''may not be renewed.'' The EPA agreed in resolving the Sierra Club's interim approval litigation not to extend interim approvals beyond December 1, 2001, the date when Maryland's interim approval expired.

The EPA believes, however, that under section 502(d) and the notice of deficiency mechanism authorized by section 502(i), it is appropriate to grant Maryland's revised part 70 program full

approval based solely on Maryland's correction of its interim approval deficiencies and to separately address any deficiencies alleged or identified post-interim approval. Section 502(d) requires that the Administrator, upon disapproving a state's initial program submission, formally notify the state of changes that must be made prior to full approval. Similarly, while not directly applicable here, section 502(g) requires EPA to notify a state of changes needed as conditions of full approval. It would be inconsistent with the structure of these provisions for EPA to deny full approval to Maryland's revised part 70 program because of newly alleged deficiencies, where Maryland's interim approval has lapsed but EPA has not yet had an opportunity to evaluate the allegations or provide notice of any identified deficiencies to the State.

Furthermore, the notice of deficiency mechanism authorized by section 502(i) provides a means for EPA to require a state to correct any newly identified deficiencies while granting full approval to the state's program. Section 502(i)(4) of the Act and 40 CFR 70.4(i) and 70.10 authorize EPA to issue a notice of deficiency (NOD) whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing an approved part 70 program, or that the state's permit program is inadequate in any other way. Consistent with these provisions, any NOD issued by EPA will specify a reasonable time-frame for the permitting authority to correct the identified deficiency. Requiring Maryland to correct deficiencies that have been alleged or identified as recently as October 2002 in order to receive full approval would run counter to the statutory and regulatory process that is already in place to deal with newly identified program deficiencies.

As discussed above, the interim approval status of Maryland's title V operating permit program lapsed on December 1, 2001. Since that time, Maryland has been implementing the delegated federal operating permit program pursuant to 40 CFR part 71. Maryland has also addressed all of the interim approval deficiencies and has fulfilled the conditions identified by EPA in order for the State to be eligible for full approval. Denying the State's program full approval because of issues alleged as recently as October 2002 would cause disruption and further delay in the issuance of title V permits to major stationary sources in Maryland. As explained above, we do not believe that title V of the Clean Air Act requires such a result. Rather, EPA believes that in the case of Maryland, where interim approval lapsed, the appropriate mechanism for dealing with additional deficiencies that are identified after the program received interim approval but prior to a revised program receiving full approval is twofold: full approval based solely on the State's correction of its interim approval deficiencies and, if necessary, issuance of a notice of deficiency to address any newly identified deficiencies. It should be noted that NODs may also be issued by EPA after a program has been granted full approval. Following the defined process for the identification of deficiencies and the issuance of NODs will provide the State an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire State operating permit program. At the same time, addressing any newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, if EPA determines that any of the alleged deficiencies in Maryland's program are well-founded, it will issue a NOD and place Maryland on notice that it must promptly correct the non-interim approval deficiencies within a specified time period or face Clean Air Act sanctions and withdrawal of program approval.

Therefore, EPA disagrees with Earthjustice that the Agency must consider all alleged deficiencies prior to granting full approval of Maryland's operating permit program. Through EPA's full approval rulemaking, interested parties have had an opportunity to identify any concerns they may have with the various aspects of Maryland's title V operating permit program. In light of the above discussion, the Agency has grouped Earthjustice's comments into three categories. The first category of comments are those related to deficiencies identified by EPA when we granted final interim approval of Maryland's program in 1996. The second category are those comments that address issues regarding Maryland's program that Earthjustice raised on March 12, 2001 and for which EPA provided formal responses in a letter to Earthjustice on September 23, 2002. The final category pertains to comments raised by Earthjustice regarding portions of Maryland's program that were approved by EPA when the Agency granted final interim approval in 1996 and that were not the subject of the proposed full approval rulemaking action published on September 10, 2002. As noted above, Maryland also made regulatory amendments to its program in addition to changes it made to address the program deficiencies identified by EPA. Earthjustice did not provide comments on any of these regulatory amendments.

Only EPA's responses to the comments related to interim approval corrections are integral to EPA's full approval of its operating permit program announced in this rulemaking. Should it be determined that EPA's consideration of the other two categories of comments in Earthjustice's October 10, 2002 letter as being outside the scope of the full approval action is inconsistent with the Clean Air Act, its implementing regulations, and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*, the Agency's responses to those comments provided below shall be considered EPA's final action in response to those comments.

A. Comments Related to Interim Approval Corrections

The following discussion responds to comments provided by Earthjustice on October 10, 2002 that pertain directly to the corrections Maryland made in order to address issues identified by EPA when it granted the State final interim approval in 1996. As discussed above, EPA believes it must respond to these comments because they are germane to this action to grant final full approval of Maryland's program. The EPA finds that Maryland has corrected all of its interim approval deficiencies.

Comment: The commenter believes Maryland's operating permit program regulations violate 40 CFR 70.5(c) and 40 CFR 70.5(c)(3)(i) by granting the State unfettered discretion to exempt units from permit application requirements even though they are not identified on a ''list'' that is approved by EPA as part of the State's program.

Response: The EPA disagrees with the commenter's assertion that Maryland's program does not meet the minimum requirements of 40 CFR 70.5(c) regarding permit application content. Maryland's regulations at Code of Maryland Regulations (COMAR) 26.11.03.04(A) exempt permittees from the obligation to provide in their permit applications detailed emissions and operational information for specific types or categories of emission units. Maryland's regulations enumerate 13 emission units or categories that are not required to be included in permit applications. These so-called ''insignificant activities'' represent emission units that are expected to have very low potential emissions and are not likely to be subject to any applicable requirements. The commenter has not raised a concern with the insignificant

activities listed in Maryland's regulations. However, the commenter expresses concern that Maryland may employ COMAR 26.11.03.04(A)(14) to expand the approved list of 13 enumerated insignificant activities without the appropriate level of EPA review and approval.

Maryland revised the language of the COMAR 26.11.03.04(A)(14) in order to address a deficiency identified by EPA when the State's program was granted interim approval. Originally, Maryland's regulations exempted from permit applications emission units without applicable requirements of the Clean Air Act. The EPA was concerned that the exemption was too broad because permittees exercising the exemption did not have to identify the specific emission units or activities to the State, EPA and the public and that the exempted units may not be part of an EPA-approved insignificant activity list. In response to EPA's concerns, Maryland modified the language of COMAR 26.11.03.04(A)(14) to require the State to agree with any recommendation that an emission unit or activity be considered an insignificant activity. Therefore, Maryland may amend the list of 13 insignificant activities enumerated in its regulations by supplementing its regulatory insignificant activity list with a non-regulatory list of activities. The EPA expects that activities added to Maryland's list pursuant to COMAR 26.11.03.04(A)(14) will be consistent with the activities included in COMAR 26.11.03.04(A)(1)-(13) and with EPA's criteria for insignificant activities.

The title V implementing regulations at 40 CFR 70.5(c) do not require insignificant activity lists to be codified as part of a state's operating permit program regulations. However, the federal regulations do require insignificant activity lists to be approved by EPA as part of a state's program. Although Maryland's regulations do not explicitly require that EPA approve of any insignificant activities added by the State using the authority of COMAR 26.11.03.04(A)(14), EPA interprets Maryland's regulations as expressing the State's intent and obligation to submit such added activities to EPA for approval as part of the Maryland operating permit program. This interpretation is consistent with the State's ongoing obligation to keep EPA apprised of any changes to its program as required by 40 CFR 70.4(i). Thus, 40 CFR 70.5(c) requires any insignificant activity list employed by Maryland to be approved as part of its program by EPA and 40 CFR 70.4(i) requires the State to keep EPA informed of any changes it intends to make to its approved program. If Maryland were to fail to seek EPA approval of amendments to its insignificant activity list, EPA could determine, pursuant to 40 CFR 70.10(b), that the State was failing to administer and enforce its approved program. Were EPA to make such a determination, Maryland would be obligated to submit the necessary program revisions and could face program withdrawal and sanctions as articulated by 40 CFR 70.10. It should be noted that the requirement of the State to implement its approved program applies generically and at all times and not only to the insignificant activity provisions.

The EPA confirmed Maryland's understanding of the State's ongoing obligation to inform EPA of all proposed program modifications and to seek EPA approval of such program changes. As documented in a December 12, 2002 memorandum from David Campbell, Air Protection Division, EPA Region III to the docket file for this action (hereafter, the December 12, 2002 memorandum), Maryland confirmed EPA's interpretation of COMAR 26.11.03.04 and related that it understands its duty to seek approval of revisions to its operating permit program, including any changes to the insignificant activity list.

Comment: The commenter believes Maryland's operating permit program regulations do not require general permits to be issued in accordance with the mandatory public participation procedures provided by 40 CFR 70.7(h). The commenter also expresses concern that Maryland's program does not clearly provide for adequate review by EPA and affected states and does not affirm citizens' authority to petition EPA to object to general permits.

Response: Maryland's regulations at COMAR 26.11.07(A)(3) require general permits to complete ''all of the public, affected State, and EPA notification, comment, and review procedures required by this regulation.'' The EPA did not correctly interpret the full scope of the public participation procedures of COMAR 26.11.07 when it reviewed the regulation as part of Maryland's original program submittal in 1995. At that time, EPA incorrectly believed that the provisions of COMAR 26.11.07 applied only to permits or permit modifications for individual sources and not to general permits. As a result, EPA identified the lack of adequate public participation for general permits as a program deficiency when it granted Maryland interim approval. In its interim approval actions, EPA directed Maryland to revise its program to add requirements to its general permit provisions to clarify that general permits must undergo appropriate EPA and affected state review and that the State shall maintain records of public comments raised during the public participation process for general permits.

It is important to note that the public participation procedures of COMAR 26.11.07 were approved by EPA as meeting the minimum requirements of 40 CFR 70.7(h). As discussed above, when EPA granted interim approval of Maryland's program in 1996 it interpreted the requirements of COMAR 26.11.07 as applying only to permits for individual sources. In that context, the Agency found the provisions acceptable and no comments were received pertaining to the public participation provisions at that time. The EPA now understands that the public participation provisions of COMAR 26.11.07 also apply to general permits and has confirmed its interpretation of these provisions with Maryland. (*See* December 12, 2002 memorandum.) The federal requirements for general permits at 40 CFR 70.6(d) requires that general permits must be subject to public participation procedures consistent with 40 CFR 70.7(h) and must comply with all requirements applicable to other part 70 permits. The provisions of COMAR 26.11.07 and COMAR 26.11.03.21 satisfy these requirements.

The provisions of COMAR 26.11.03.21 that apply specifically to general permits should be interpreted to be additional requirements on these type of permits above and beyond those that apply to permits for individual sources. This interpretation is supported by the language of COMAR 26.11.03.21(A) that states that ''[a]ny general permit shall comply with all requirements applicable to other part 70 permits. * * *'' It should be noted that COMAR 26.11.03.21(A) indicates that general permits must also satisfy the public participation requirements of Maryland's Administrative Procedure Act, State Government Article, section 10–101 *et seq.*

With regard to citizens' authority to petition EPA, COMAR 26.11.03.07(G) and COMAR 26.11.03.10 affirm the authority of citizens to petition EPA to object to a permit. The provisions of these regulations apply to both permits for individual sources and general permits. Likewise, the provisions of COMAR 26.11.03.08 and 26.11.03.09 regarding affected state and EPA review, respectively, apply to permits for individual sources and general permits. Each of these provisions have been previously determined to be consistent

with the relevant requirements of 40 CFR part 70.

While EPA now understands that such changes were not necessary, Maryland made the changes to its regulations as recommended when EPA granted final interim approval in 1996. The changes made by Maryland simply underscore the requirement that general permits must be subject to the public participation procedures and EPA and affected state review afforded permits for individual permits.

Comment: The commenter believes that the permit modification procedures that apply to Maryland's general permits violate 40 CFR part 70. The applicable federal regulations do not allow an individual source operating under a general permit to unilaterally request a change to the general permit and proceed to make operational changes prior to modification of the terms of the general permit.

Response: Maryland's regulations do not allow an individual source operating under a general permit to formally request a change to the general permit and to proceed to make operational changes prior to modification of the general permit. As discussed above, Maryland must follow all of the public participation procedures as required by the rulemaking provisions of the State's Administrative Procedures Act prior to making a change to the general permit. Subsequent to making the change to the general permit, the State would have to revise the general permit by following all of the public participation requirements required of such actions by its operating permit regulations, namely COMAR 26.11.03.07. Therefore, it is impractical for an individual source that is covered by an existing general permit to appropriately apply for a modification of the general permit that would effect that source as well as any other source covered by the general permit.

Since Maryland must initiate any action to revise the general permit, the only available mechanism for such revisions are derived from COMAR 26.11.03.20 which governs the reopening of operating permits by Maryland. Maryland's regulations indicate that such permit revision procedures as administrative amendments and minor and significant permit modifications may only be initiated by permittees. As mentioned above, individual permittees may not initiate the rulemaking procedures that are necessary to revise general permits in Maryland. It should be noted that Maryland's Administrative Procedures Act allows the public to petition the State to request a specific rulemaking action. Thus, an individual source may petition the State to make a revision to an existing general permit, however, Maryland is not obligated in any way by its operating permit regulations to respond to such petitions.

As part of its interim approval action, EPA identified concerns with the manner in which Maryland's regulations addressed general permit modifications. Maryland's regulations had provided the State with the authority to define the appropriate permit modification procedures on a case-specific basis or within the legal construction of a general permit. EPA felt that these provisions provided too much discretion to Maryland in terms of how future modifications to general permits would proceed. In order to address the interim approval deficiency, Maryland removed the authority to define general permit modification procedures on an informal basis or as part of the framework of a general permit. In its interim approval action, EPA further directed Maryland to clarify that the procedures for making revisions to general permits are consistent with 40 CFR 70.7(e) which governs permit modifications. Maryland addressed this issue by stating in its regulations at COMAR 26.11.03.21(L) that the permit revisions procedures that apply to permits for individual sources also apply to general permits. The EPA determined in the final interim approval action that the permit modification procedures that apply to permits for individual sources are consistent with 40 CFR 70.7(e) and the minimum requirements of part 70.

The regulations at 40 CFR 70.6(d) governing general permits provide limited discussion regarding the expected or required permit modification procedures for general permits other than requiring general permits to ''comply with all requirements applicable to other part 70 permits.'' From this reference, it is inferred in the absence of more specific regulatory language regarding general permit modification procedures, that the permit modification procedures for permits for individual sources articulated at 40 CFR 70.7(e) would be applicable to general permits. Therefore, Maryland has amended its regulations regarding the modification procedures for general permits as directed by EPA and in a manner consistent with the minimum requirements of part 70.

As discussed above, EPA did not have a complete understanding of Maryland's regulations with regard to the general permit provisions when it granted final interim approval in 1996. The requirements of COMAR 26.11.03.21(L) are, as a practical matter, not applicable to modifications of general permits since only the State of Maryland may revise general permits by initiating its rulemaking procedures and then using its authority to reopen the existing general permit.

It should be noted that if an affected individual source were to attempt to seek a revision to an existing general permit, there would be a number of safeguards and negative ramifications that should minimize the potential for erroneous implementation of the permit revision process on the source's part. First, it is assumed that the source would submit some form of application or formal request seeking a modification to the general permit. As part of that request, Maryland's permit modification procedures requires applicants to certify that they are using the appropriate permit revision process when filing a revision request. Upon receipt of the modification request, Maryland would deny the application on grounds that the source was not authorized to request such a change to a general permit. Furthermore, if the applicant preceded to make the change it is requesting prior to the State responding to the request, the applicant would not be operating consistent with its approved permit and could face associated enforcement and penalty ramifications. The EPA confirmed this understanding of COMAR 26.11.03.21 and how Maryland would implement its general permit provisions. (*See* December 12, 2002 memorandum.)

B. Comments Pertaining to Issues Raised in Earthjustice's March 12, 2002 Letter

The following discussion responds to comments provided by Earthjustice on October 10, 2002 regarding issues that Earthjustice initially raised as part of its March 12, 2002 letter to EPA. As discussed above, EPA provided its formal responses regarding these issues to Earthjustice on September 23, 2002 and has made those responses available to the public. The Agency does not believe it is required to respond to these comments as part of its action to grant final full approval to Maryland. Nonetheless, the following responses are provided to clarify our original responses and to respond to additional points raised by Earthjustice regarding these matters in its October 10, 2002 letter.

Comment: The commenter believes that EPA must unequivocally determine that Ann. Code Md. 2–106 does not interfere with the public's ability to enforce permit conditions in federal

court under section 304 of the Clean Air Act, 42 U.S.C. 7604. The commenter also asserts that EPA's determination must, at a minimum, be supported by an opinion from the Maryland Attorney General's office.

Response: Ann. Code Md. 2–106 states:

> 2–106—Rights of persons other than this State.
>
> (a) Presumption and finding of fact.—A determination by the Department that air pollution exists or that a rule or regulation has been disregarded or violated does not create any presumption of law or finding of fact for the benefit of any person other than this State.
>
> (b) Proceedings.—Any proceedings under this title shall be brought by the Department for the benefit of the people of this State.
>
> (c) Actionable rights.—No person other than this State acquires actionable rights by virtue of this title.

While this State statute does prevent citizens from bringing suit in federal or state court to enforce provisions of Maryland's air quality control law, the plain and unambiguous language of Ann. Code Md. 2–106 limits its scope to proceedings brought ''under this title'' or ''by virtue of this title'' (the ''title'' in question being Maryland's Title 2, entitled ''Ambient Air Quality Control''). Therefore, the statute does not affect any right conferred by any federal law. Section 304 of the Clean Air Act, 42 U.S.C. 7604, is federal law, and beyond the self-limiting reach of the language of Ann. Code Md. 2–106.

Our previous response cited *Maryland Waste Coalition* v. *SCM Corp.,* 616 F. Supp. 1474, 1477 (D. Md. 1985). While we cited this case because the court specifically observed that Ann. Code Md. 2–106(c) allows only the State, and not private citizens, to bring an action to enforce the Maryland air pollution laws, it is worth noting that the *SCM* court did not cite Ann. Code Md. 2–106 as a bar to the citizen suit brought by the plaintiff pursuant to section 304 of the Clean Air Act. (The court did find that certain of the plaintiff's claims were barred by section 304 to the extent that the plaintiff claims overlapped those in a previously filed enforcement action brought by EPA.)

Furthermore, as we also pointed out in our prior response, ''had Maryland attempted to prescribe the types, kinds and weights to be ascribed to evidence entered in a federal forum, such an action would have obvious implications on the system of federalism established by the United States' Constitution.''

Had Maryland attempted with Ann. Code Md. 2–106 to divest a right to bring a citizen suit under federal law in a federal court, the federalism implications would be just as apparent. Such a stark conflict with the federal statute would be nullified by the Supremacy Clause of the United States Constitution, which provides, ''This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.'' U.S. Const. art. VI, Paragraph 2.

Under the Supremacy Clause, everyone must follow federal law in the face of conflicting state law. ''It is basic to this constitutional command that all conflicting state provisions be without effect.'' *Maryland* v. *Louisiana,* 451 U.S. 725, 746 (1981), citing *McCulloch* v. *Maryland,* 4 Wheat. 316, 427 (1819). ''[A] state statute is void to the extent it conflicts with a federal statute—if, for example, 'compliance with both federal and state regulations is a physical impossibility' or where the law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' '' *Id.* (internal citations omitted).

Ann. Code Md. 2–106 does not on its face conflict with or present an obstacle to the full purpose and objective of Section 304 of the Clean Air Act. Even if such a conflict existed, the statute would be unconstitutional based on the Supremacy Clause as interpreted by the Supreme Court. Therefore, EPA can unequivocally state that Ann. Code Md. 2–106 does not conflict with or affect any rights conferred by Section 304 of the Clean Air Act, including the public's ability to enforce title V permit conditions in federal court. The EPA does not believe that obtaining an opinion from the Maryland Attorney General would add anything to this analysis.

Comment: The commenter believes that a provision of Maryland law, Ann. Code Md. 2–611, illegally shields violators from enforcement so long as they operate in compliance with a compliance plan.

Response: The EPA disagrees with this comment. On September 23, 2002, EPA responded to a comment submitted on March 12, 2001 with respect to Ann. Code Md. 2–611. The original comment erroneously stated that this statutory provision ''amounts to a blanket waiver or suspension of applicable requirements, and an amendment of the permit without following required modification procedures, all in violation of title V, and that ''the provision could preclude citizens and EPA from enforcing permit requirements * * *'' The EPA's response was based in part on the Maryland Attorney General's interpretation of this provision. To give the proper context to the current comment, we believe that it is helpful to set forth EPA's response to the original comment in full below:

EPA Response to Comment 6: Ann. Code Md. 2–611 provides:

> A person is not subject to action for a violation of this title or any rule or regulation adopted under this title so long as the person acts in accordance with a plan for compliance that (1) the person has submitted to the Secretary; and (2) the Secretary has approved, with or without amendments, on the recommendation of the Air Management Administration. The Secretary shall act on any plan for compliance within 90 days after the plan for compliance is submitted to the Secretary.

When a State is diligently prosecuting a facility for violations of its permit, it is typical and reasonable to give a facility a compliance schedule to bring a facility into compliance with its permit conditions. Indeed, EPA's regulations at 40 CFR 70.5(c)(8)(iii)(C) and 70.6(c)(3) require that a title V permit application and permit include a compliance plan containing a compliance schedule for requirements for which the covered source is not in compliance at the time of permit issuance. If a facility must modify its permit due to the conditions of a compliance plan, then that facility should follow all proper procedures to modify its permit as needed. This Maryland law does not allow a title V source to bypass the permit modification process. In addition, the State law does not prevent EPA from enforcing permit requirements (as noted in response to Comment 2, Maryland law does not contain a general citizen suit provision to enforce violations of its air pollution regulations, including permit requirements; however, this is not a legal deficiency in the Maryland program).

Further, neither EPA nor MDE [Maryland Department of Environment] interprets Ann. Code Md. 2–611 as a blanket waiver or suspension of any other applicable requirements for a source. Maryland has submitted to EPA a an opinion from the Maryland Attorney General that affirms MDE and EPA's position that the law applies only to violations that are expressly addressed by the compliance plan. See Attachment 4. EPA does not agree that Ann. Code Md 2–611 represents a deficiency in the State's part 70 program.

The commenter apparently accepts EPA's explanation with respect to the points addressed above, but now asserts

a new defect with Ann. Code Md. 2–611, namely that ''it exempts a person from enforcement action for a violation of an air pollution limitation 'so long as the person acts in accordance with a plan for compliance.' '' Such an exemption, the commenter asserts ''explicitly violates Part 70's prohibition against a compliance schedule that 'sanction[s] noncompliance with, the applicable requirements on which it is based.' '' 40 CFR 70.5(c)(8)(iii)(C).

However, the commenter has alleged a conflict between 40 CFR 70.5(c)(8)(iii)(C) and Ann. Code. Md. 2–611 that does not exist either explicitly or implicitly. The language of 40 CFR 70.5(c)(8) speaks to the contents of the compliance schedule. Under 70.5(c)(8) any compliance schedule must meet certain criteria. For example, 40 CFR 70.5(c)(8)(iii)(C) requires that the schedule ''include a schedule of remedial measures, including an enforceable sequence of actions with milestones, *leading to compliance with any applicable requirements * * *''* (Emphasis added.) Further, the schedule must be ''at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.'' The last requirement is that ''the schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

The federal regulations at 40 CFR 70.5(c)(8)(iii)(C) contemplate that a compliance schedule may be little more than the recitation of requirements set forth in a judicial consent decree or an administrative order that has been agreed to between the source and a state or federal enforcement agency to fully and finally settle a dispute with the source. Any such compliance schedule necessarily would be supplemental to the existing applicable requirements on which its based. The title V permits, judicial consent decree or administrative order that defines the schedule may not, in of themselves, amend the underlying legal instruments such as state regulations or permits that establish the subject applicable requirements. Indeed, the regulatory language makes clear that a compliance plan must lead to compliance with all applicable requirements. The commenter seems to suggest that the requirement that the compliance schedule ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based,'' essentially means that is mandatory that such schedules reopen concluded matters. The Agency does not believe that ever was the intent of this provision.

Instead, when all provisions of 40 CFR 70.5(c)(8)(iii)(C) are read in *pari materia* the prohibition of sanctioning noncompliance with underlying applicable requirements necessarily must refer to *all* applicable requirements, including judicial consent decrees and administrative orders (a term broad enough to easily encompass the type of plan for compliance contemplated by Ann. Code. Md. 2–611) with which a source is legally obligated to comply.

Comment: The commenter believes that Maryland has failed to adequately implement its operating permit program because the State did not issue all of its initial permits in accordance with the statutory three-year schedule.

Response: On December 1, 2001, EPA's interim approval of Maryland's title V operating permit program lapsed because the State was unable to submit all of the program revisions necessary to satisfactorily address the deficiencies identified by EPA when it granted the State final interim approval. At the time of program lapse, Maryland had not taken final action on all of its initial operating permit program applications. Also on December 1, 2001, EPA granted to Maryland the full delegation of authority to implement and enforce the federal operating permit program requirements established at 40 CFR part 71. Once the requirements of 40 CFR part 71 took effect, the State of Maryland could no longer issue federally enforceable permits pursuant to its own program regulations. The part 71 permit program established a new schedule for the submittal of permit applications and issuance of permits by Maryland. That schedule required Maryland to issue part 71 permits to the remaining initial permit applicants by December 1, 2004. As of December 1, 2001, 47 sources had not received initial title V permits in Maryland.

As discussed in the September 23, 2002 letter, the State of Maryland has committed to EPA that it will issue the remaining 47 permits within two years of receiving final full approval of its operating permit program. The two year time frame is consistent with the time provided other states that had failed to issue all of their initial operating permits within the statutory time-frame. As noted by the commenter, a number of states provided letters to EPA in December 2001 committing to issue their remaining permits within two years. The EPA believes Maryland is capable of achieving or surpassing its commitment and will closely monitor the State's permit issuance rates once the final full approval of its program is effective. Should Maryland fail to make adequate progress toward meeting its commitment, the Agency will pursue options to address the situation, including the issuance of a notice of deficiency.

Comment: The commenter believes that Maryland has inadequately implemented is operating permit program with respect to the operating permit program reporting requirements for required monitoring.

Response: As discussed in our September 23, 2002 response, EPA disagrees with Earthjustice's assertion that Maryland is not implementing its monitoring report requirements in a manner consistent with the minimum requirements of part 70. Maryland's regulations with respect to requiring permittees to submit reports of any required monitoring at least every six months (hereafter, ''six-month monitoring reports'') are consistent with the requirements of 40 CFR 70.6(a)(3)(iii)(A). The provisions of 40 CFR 70.6(a)(iii)(A) do not specify the form or content of acceptable six-month monitoring reports other than the requirement that all deviations from permits requirements must be clearly identified in the reports. Therefore, considerable latitude has been provided to permitting authorities to develop specific reporting requirements in individual permits in order to satisfy the six-month monitoring report requirements. The EPA believes that Maryland has issued permits that reasonably provide adequate monitoring information to assess compliance in a timely fashion and that the permit requirements meet the minimum requirements of 40 CFR 70.6(a)(3)(iii)(A).

As noted in EPA's September 23, 2002 letter, Maryland has committed to modifying the manner in which it implements the six-month monitoring report requirements in individual permits. Upon the effective date of the final full approval, Maryland has committed to issue permits that clarify that six-month monitoring reports are required over all periods, including those when no deviations or excess emissions occurred. This change will affirm that the permits meet the requirement to submit monitoring reports every six months. The EPA believes Maryland is capable of meeting this commitment and will monitor the permits issued by Maryland once final full approval of its program becomes effective. The Agency feels it is prudent to allow Maryland an opportunity to demonstrate its ability to meet its commitment prior to determining whether a notice of deficiency is warranted.

The EPA also does not believe it is necessary at this time to require Maryland to reopen all existing permits to further clarify the six-month monitoring report requirements. If the Agency becomes aware of a particular existing permit that, based on the facts specific to that permit, warrants reopening to clarify the six-month monitoring reporting requirements, EPA will proceed with the appropriate actions to ensure the permit is revised. At this time, the Agency believes that Maryland should focus its resources on reestablishing its program and issuing the remaining initial permits.

Comment: The commenter believes Maryland's minor permit modification procedures apply to changes that must be subject to significant permit modification procedures. Specifically, the commenter is concerned that Maryland could inappropriately add new requirements to a permit or change the required test method specified in a permit via the minor modification process when such modifications could represent significant modifications.

Response: Maryland's regulations at COMAR 26.11.03.16 specify the types of changes that may qualify to be processed as minor permit modifications. One of the requirements a proposed change must meet in order to be considered a minor permit modification is that the change is not required to be processed as a significant modification. While other provisions of COMAR 26.11.03.16 identify specific types of modifications that could be processed as minor permit modifications, COMAR 26.11.03.16(B)(6) requires that all minor modifications must also meet the test that they do not represent significant permit modifications. Therefore, it is important to evaluate Maryland's regulations with respect to the criteria for significant permit modification. Maryland's criteria for significant permit modifications at COMAR 26.11.03.17 are consistent with 40 CFR 70.7(e)(4). In summary, Maryland's and EPA's regulations require any changes to a permit that represent a significant change in existing monitoring conditions and any relaxation of reporting or recordkeeping conditions must be treated as a significant modification.

According to COMAR 26.11.03.16, the addition of a new applicable monitoring, reporting, and recordkeeping requirement or the specification of a different approved test method must not be considered a significant change or relaxation of existing permit conditions in order to be considered a minor modification. If such changes constitute a significant change or relaxation, Maryland's regulations requires the such changes to be processed as significant permit modifications.

In constructing its minor permit modification procedures, it appears that Maryland has attempted to provide more direction to permittees in terms of the types of changes that may be considered minor modifications than is provided in the federal regulations at 40 CFR 70.7(e). Other than this added specificity, COMAR 26.11.03.16 is consistent with the minor permit modification procedures expressed at 40 CFR 70.7(e)(2). As discussed above, this added detail does not authorize sources to make changes using the minor modification procedures that would otherwise be considered significant permit modifications. Furthermore, 40 CFR 70.4(b)(13) and 70.7(e) do not require permit programs to establish modification procedures that are identical to the federal requirements. Rather, state procedures must be substantially equivalent to procedures outlined in 40 CFR 70.7(e). The EPA believes that Maryland's permit modification procedures are substantially equivalent to 40 CFR 70.7(e) and provide adequate safeguards to prevent inappropriate application of the permit modification procedures.

C. Comments Related to Issues Raised in Earthjustice's October 10, 2002 Letter

The following discussion responds to comments provided by Earthjustice on October 10, 2002 regarding issues that are being identified for the first time. Earthjustice's October 10, 2002 letter raises concerns with portions of Maryland's program that were approved by EPA in 1996 and that were not the subject of the proposed full approval rulemaking action published on September 10, 2002. The Agency does not believe it is required to respond to these comments in order to grant final full approval to Maryland. Nonetheless, the following responses are provided to reinforce the merits of our approval of the relevant program provisions in 1996. In the event that a court finds that EPA is obligated to respond to these comments in order to grant final full approval to Maryland's program, then the following responses should be considered EPA's final action on the issues raised.

Comment: The commenter believes that Maryland's operating permit program regulations are unclear regarding whether all emissions units, including ''insignificant'' emissions units, are included in operating permits. The commenter is particularly concerned that only ''relevant'' emission units are covered by operating permits.

Response: Maryland's operating permit program regulations require, pursuant to numerous provisions, that all applicable requirements be identified in permit applications and permits. The federal regulations at 40 CFR 70.3(c) indicate that permits for major sources shall include ''all applicable requirements for all relevant emission units.'' Maryland's regulations at COMAR 26.11.03.05(A) are virtually identical to the federal regulations, including the reference to ''relevant'' emission units. Maryland's regulations, like the federal regulations, do not ascribe further meaning to the term ''relevant'' emission units. COMAR 26.11.02.01(B)(18) defines the term ''emission unit'' to include ''a part or activity of a stationary source, including an installation, that emits or has the potential to emit a regulated air pollutant or hazardous air pollutant listed under § 112(b) of the Clean Air Act.'' In other words, Maryland does not limit the applicability of its operating permit program to certain types of units at major sources. In addition, like EPA's regulations at 40 CFR 70.6(a)(1), Maryland's regulations at COMAR 26.11.03.06(A)(1) require that part 70 permits assure compliance with all applicable requirements of the Clean Air Act. Thus, under the Clean Air Act, part 70 and Maryland's regulations, any permit for a major source must assure compliance with all applicable requirements for any and all emission units at that source. Maryland's regulations meet the minimum federal requirements.

Furthermore, Maryland's regulations governing permit application content at COMAR 26.11.03.03(B)(14), 26.11.03.03(E), and 26.11.04(C) require applicants to provide all information to implement and enforce any applicable requirements or determine the applicability of such requirements; determine if a source is subject to all applicable requirements; and, ensure that all applicable requirements of the Clean Air Act are included in the permit, regardless of whether or not the emission unit is a ''relevant'' unit or an insignificant activity as defined in Maryland's regulations. Maryland's regulations at COMAR 26.11.03.04(D) further confirms that insignificant activities or emission units are not exempt from any applicable requirements of the Clean Air Act other than those related to the amount of information applicants must provide in permit applications regarding those activities.

The commenter expressed a concern with a specific provision of Maryland's permit regulations, COMAR 26.11.03.01(G), that affects the general applicability of the title V operating permit program. This provision indicates that major sources with title V operating permits are not required to also obtain a State operating permit for those emission units at the source covered by the title V operating permit. The commenter suggests that the language of this provision in some way implies that there are emission units at major sources that may not be ''covered'' by the title V operating permit even if they have applicable requirements of the Clean Air Act. In this context, the term ''covered'' should be interpreted to indicate that the title V operating permit reflects federally-enforceable applicable requirements of the Clean Air Act for the emission unit in question. Maryland's regulations are indicating that if an emission unit does not have any applicable requirements of the Clean Air Act that emission unit would not be ''covered'' by the title V permit for purposes of the major source's obligation to also obtain a State operating permit. As discussed above, Maryland's title V regulations require permits to reflect all applicable requirements of the Clean Air Act for all emission units.

In other words, an emission unit at a major source may not have any Clean Air Act requirements, but it may be subject to State-only enforceable requirements. If that is the case, the major source must seek a State operating permit to ''cover'' that emission unit and to reflect its State-only enforceable applicable requirement. Maryland wants to ensure that all emission units at major sources are covered by either a title V operating permit or State operating permit, with all federal applicable requirements contained in the title V operating permit and any State-only enforceable requirements reflected in the State operating permit. Pursuant to COMAR 26.11.03.05(C), Maryland may also include State-only enforceable conditions in title V permits.

Comment: The commenter believes Maryland's operating permit program regulations improperly allow a facility to operate pursuant to a general permit prior to the State's approval of its application.

Response: The federal regulations at 40 CFR 70.5(a)(2) and 70.7(a)(4) that describe the permit application review procedures indicate that, among other things, permit applications that have not been formally deemed incomplete by the permitting authority within 60 days of receipt shall be deemed complete. These procedures as they are applied to general permits are modified by 40 CFR 70.7(a)(1)(i) in that complete applications for general permits do not have to be received prior to issuance of the subject general permit. Maryland's regulations at COMAR 26.11.03.02(C) are consistent with the federal regulations because they provide that a permit application is deemed complete within 60 days of receipt if the State has not informed the applicant that the application is incomplete or that additional information is required.

As discussed earlier, 40 CFR 70.6(d) and COMAR 26.11.03.21 which establish the procedural requirements applicable to general permits clearly indicate that general permits shall comply with all requirements applicable to permits for individual sources. This includes the application procedures of 40 CFR 70.5(a)(2) and 70.7(a)(4) and COMAR 26.11.03.02(C) that apply to permits for individual sources. The commenter points out that COMAR 26.11.03.21(H) provides that a response to each general permit application may not be provided and that the general permit may specify a reasonable time after which the application is deemed acceptable. This provision is consistent with 40 CFR 70.5(a)(2) and 70.7(a)(4) which allows for applications to be deemed acceptable after a fixed period of time if no response is provided by the permitting authority. It should be noted that COMAR 26.11.03.21(G) indicates that the State may grant a determination that a particular applicant qualifies for a general permit. Also, COMAR 26.11.03.21(I) indicates that Maryland may issue an applicant for a general permit a letter or other document approving or deny the application. Likewise, Maryland is required by COMAR 26.11.03.13(A)(4) to take action on an application for a general permit as specified in the framework of the general permit. These provisions establish the authority and expectation that the State intends to actively respond to applications for general permits much in the same manner Maryland responds to permit applications for individual sources.

In further support of this interpretation, the granting of a major source's application request for authorization to operate under a general permit does not, according to 40 CFR 70.7(d)(6)(2) and COMAR 26.11.03.21(G), represent a final permit action for purposes of judicial review. In other words, the State takes final permit action when it issues the final general permit and not when individual sources subsequently request to be covered by the general permit. Thus, the requirements of 42 U.S.C. 7661b(c), 40 CFR 70.4(b)(6) and 70.7(a)(2) regarding the permitting authorities' obligation to take action on permit applications by issuing or denying permits within the specified time periods are not directly applicable to the general permit process. As noted above, the federal requirements for general permits anticipate that permitting authorities will take final action on permits prior to individual sources applying for coverage under the general permit. It would be impractical to expect permitting authorities to act on permit applications in a certain time frame when no such applications may be submitted. In other words, sources requiring permits would not submit applications to be covered by a general permit before the general permit exists, therefore, the permitting authority would not have permit applications to respond to until it had already fulfilled its obligation by taking final action on the general permit. Again, practical application of the procedures for general permits do not clearly align with all of the applicable requirements established for permits for individual sources.

The commenter is concerned that an applicant for a general permit that does not qualify may operate under the terms of the general permit if the State fails to respond to its general permit application in a timely fashion. The construction of Maryland's general permit provisions require the State to explicitly define the criteria by which sources may qualify for the general permit. Further, COMAR 26.11.03.21(E) limits general permits to major sources that qualify and COMAR 26.11.03.21(C) stipulates that applicants are subject to enforcement action for operating without a permit if it is determined that they do not qualify for coverage under the general permit.

The EPA appreciates the apparent tension between a number of the provisions in Maryland's regulations governing general permits, particularly with regard to COMAR 26.11.03.21(H) and the obligation of the State to actively respond to permit applications. While EPA interprets Maryland's regulations to meet the minimum requirements of the Clean Air Act and 40 CFR part 70, the Agency expects the State to employ its authority to ensure that only qualified applicants are covered by any general permits issued by Maryland. No general permits have been issued by Maryland to date and the State has indicated informally that the prospects of such issuance in the future are minimal. (See December 12, 2002 memorandum.) Should the State

develop a general permit, the EPA expects that Maryland would use its authority under COMAR 26.11.03.13(A)(1)(a) and 26.11.03.21(F), (G) and (I) to provide procedures in the general permit that expressly require an applicant to obtain an affirmative determination from the State that it qualifies for the general permit prior to being considered covered by the general permit.

Comment: The commenter believes that Maryland's operating permit program regulations are inconsistent with 40 CFR part 70 with respect to the administrative amendment procedures. Specifically, the commenter is concerned that Maryland and EPA, on an ad hoc basis, may approve permit changes as qualifying for processing as administrative amendments even though they do not meet the regulatory criteria for processing as administrative amendments. The commenter asserts that because the public receives no notice of administrative amendments, the public must receive an opportunity to evaluate whether particular types of administrative amendments are appropriate.

Response: Maryland's regulations at COMAR 26.11.03.15 define six types or categories of permit changes that may be processed as administrative amendments in a manner consistent with 40 CFR part 70.7(d). In large part, the language of Maryland's regulations is identical to the federal regulations governing administrative amendments. The last category in both regulations indicate that other unspecified permit changes may be considered administrative amendments provided the changes are similar to those explicitly defined in the regulation and that EPA approves the types of changes as being similar to the other approved changes. Specifically, the federal provisions at 40 CFR 70.7(d)(1)(vi) state that only changes that EPA ''has determined as part of the approved program to be similar to those in paragraphs (d)(1)(i) through (iv) of this section,'' may be considered administrative amendments. Maryland's regulation at COMAR 26.11.03.15(B)(6) states that any change ''as approved by the EPA, which is similar to those in Section B(1)—(4) of this regulation'' may be considered an administrative amendment.

The EPA does not share the commenter's concern that EPA or Maryland will use the slightly different phrasing of COMAR 26.11.03.15(B)(6) to informally change the approved list of changes that may be processed as administrative amendments under 40 CFR 70.6(d)(1). The EPA would consider any proposed change to the approved list of administrative amendment categories as a revision to Maryland's approved program as defined by 40 CFR 70.4(i). As such, the revision would have to be approved by EPA consistent with 40 CFR 70.4(i)(2). Should Maryland attempt to modify its approved list of changes qualifying for processing as administrative amendments and implement the modified list without first seeking EPA approval, the Agency would find pursuant to 40 CFR 70.10(b) that the State was failing to implement and enforce its approved program. Such a finding would require the State to submit the necessary program revisions or face program withdrawal and other sanctions provided by the Clean Air Act and part 70.

The intended effect of 40 CFR 70.7(d)(1)(vi) is to provide EPA with the authority to approve as part of a state's program additional types of permit changes that qualify for processing as administrative amendments. The expectation is that the state would specifically list the types of changes that the state proposes to be eligible for processing as administrative amendments as part of the state's operating permit regulations and submit those regulations to EPA for approval as revisions to the state's program. Maryland's regulation is simply reiterating the authority of the State to propose additional types of changes and the requirement that EPA must approve such changes. Maryland's regulations can in no way amend or alter the means by which EPA can approve changes to the State's approved program as provided by the Clean Air Act and 40 CFR part 70.

Comment: The commenter believes Maryland's operating permit program regulations impermissibly allow changes at a source to occur without a permit revision even when such change constitutes a modification under title I of the Clean Air Act.

Response: EPA stated its interpretation of what constitutes a ''title I modification'' under the current 40 CFR part 70 in the preamble to proposed revisions to 40 CFR parts 70 and 71 that were published in the **Federal Register** on August 31, 1995 (60 FR 45530). In particular, EPA stated that the term ''title I modifications'' under the current regulations should be read to exclude changes subject to the minor new source review program in section 110(a)(2)(C) of the Clean Air Act. The rationale for this interpretation is set forth at 60 FR at 45545–45546.

Prior to the lapse of interim approval, Maryland was implementing its program consistent with EPA's current interpretation of what represents a title I modification. EPA fully expects that Maryland will implement its fully-approve operating permit program consistent with its past practices and EPA's current interpretation of what represents a title I modification.

How Does This Action Affect the Part 71 Program in Maryland?

The EPA is fully approving Maryland's title V operating permit program. Upon the effective date of this action, the part 71 program will no longer be effective in Maryland. Likewise, the delegation of the authority to implement and enforcement the part 71 program to Maryland will be terminated. However, a part 71 program could become effective at a future date if EPA makes a finding that Maryland's title V program fails to meet the requirements of part 70. If such a finding is made, the Agency will use its authority and follow the procedures under section 502(i) of the Clean Air Act and 40 CFR 70.10.

Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have

substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, *see* 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on February 14, 2003.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting final full approval of Maryland's title V operating permit program may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: January 9, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (b) in the entry for Maryland to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Maryland

* * * * *

(b) The Maryland Department of Environmental Quality submitted operating permit program amendments on July 15, 2002. The program amendments contained in the July 15, 2002 submittal adequately addressed the conditions of the interim approval effective on August 2, 1996. The State is hereby granted final full approval effective on February 14, 2003.

* * * * *

[FR Doc. 03–959 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–43, MM Docket No. 01–306, RM–10152]

Digital Television Broadcast Service; Hartford, CT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Fox Television Stations, Inc., substitutes DTV channel 31 for DTV channel 5 for Tribune Television Corporation's station WTIC–TV at Hartford, Connecticut. *See* 66 FR 54970, October 31, 2001. DTV channel 31 can be allotted to Hartford, Connecticut, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 41–42–13 N. and 72–49–57 W. with a power of 500, HAAT of 492 meters and with a DTV service population of 3641 thousand. Since the community of Hartford is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–306, adopted January 7, 2003, and released January 8, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Connecticut, is amended by removing DTV channel 5 and adding DTV channel 31 at Hartford.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–815 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3171; MM Docket No. 99–239; RM–9658]

Radio Broadcasting Services; Johannesburg and Edwards, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: At the request of Amaturo Group of Los Angeles, Ltd., this document dismisses a petition for reconsideration filed by Amaturo Group of Los Angeles, Ltd., seeking reconsideration of the *Report and Order* in this proceeding. *See* 65 FR 53639, September 5, 2000. This petition for reconsideration was opposed by Adelman Communications, Inc, and petitioner filed a response. Petitioner subsequently filed a request to withdraw the petition for reconsideration, contingent on the finality of the *Report and Order* in MM Docket No. 99–329. This docket is now final. All parties filed affidavits attesting to the fact that it no consideration was promised or paid.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 99–239, adopted December 13, 2002, and released December 16, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals 11, 445 12th Street, SW., Room CY–B402, Washington, DC. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–810 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 68, No. 10
Wednesday, January 15, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 735

RIN: 3206–AJ74

Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing a plain language rewrite of its regulations regarding the standards that govern employee responsibilities and conduct as part of a broader review of OPM's regulations. The purpose of the revisions is to make the regulations more readable.

DATES: Comments must be submitted on or before March 17, 2003.

ADDRESSES: Send or deliver written comments to Wade Plunkett, Principal Deputy Ethics Official, Office of the General Counsel, Office of Personnel Management, Room 7532, 1900 E St., NW., Washington, DC 20415, or FAX: 202–606–0082 or e-mail them to wmplunke@opm.gov.

FOR FURTHER INFORMATION CONTACT: Wade Plunkett, by telephone at 202–606–1700; or by FAX at 202–606–0082 or by e-mail at *wmplunke@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is revising part 735, which deals with employee responsibility and conduct, as part of a larger review of OPM regulations for plain language purposes. The purpose of this revision to part 735 is not to make substantive changes, but rather to make part 735 more readable. The proposed regulations have been converted to a question-and-answer format, and we have made minor changes to the wording to enhance clarity.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 735

Conflicts of interest, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to revise part 735 as follows:

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Note: Part 1001, added to this subchapter at 31 FR 873, January 22, 1966, and revised at 32 FR 11113, August 1, 1967, 36 FR 6874, April 9, 1971, and 61 FR 36996, July 16, 1996, supplement this part 735.

Subpart A—General Provisions

Sec.

Subpart B—Standards of Conduct

Sec.

Authority: 5 U.S.C. 7301; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 735.101 Definitions.

In this part:

Agency means an Executive agency (other than the General Accounting Office) as defined by 5 U.S.C. 105, the Postal Service, and the Postal Rate Commission.

Employee means any officer or employee of an agency, including a special Government employee, but does not include a member of the uniformed services.

Government means the United States Government.

Special Government employee means those officers or employees specified in 18 U.S.C. 202(a) except those employed in the legislative branch or by the District of Columbia.

Uniformed services has the meaning given that term by 5 U.S.C. 2101(3).

§ 735.102 What are grounds for disciplinary action?

An employee's violation of any of the regulations in subpart B of this part may be cause for disciplinary action by the employee's agency, which may be in addition to any penalty prescribed by law.

§ 735.103 What other regulations pertain to employee conduct?

In addition to the standards of conduct in subpart B of this part, an employee shall comply with the standards of ethical conduct in 5 CFR part 2635, as well as any supplemental regulation issued by the employee's agency under 5 CFR 2635.105. An employee's violation of those regulations may cause the employee's agency to take disciplinary action, or corrective action as that term is used in 5 CFR part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

Subpart B—Standards of Conduct

§ 735.201 What are the restrictions on gambling?

(a) While on Government-owned or leased property or on duty for the Government, an employee shall not conduct or participate in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket.

(b) This section does not preclude activities:

(1) Necessitated by an employee's official duties; or

(2) Occurring under section 7 of Executive Order 12353 and similar agency-approved activities.

§ 735.202 What are the restrictions that safeguard the examination process?

(a) An employee shall not, with or without compensation, teach, lecture, or write for the purpose of the preparation of a person or class of persons for an examination of the Office of Personnel Management (OPM) or Board of

Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment.

(b) This section does not preclude the preparation described in paragraph

(a) of this section if:

(1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or

(2) Such preparation is authorized in writing by the Director of OPM, or his or her designee, or by the Director General of the Foreign Service, or his or her designee, as applicable.

§ 735.203 What are the restrictions on conduct prejudicial to the Government?

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

[FR Doc. 03–818 Filed 1–14–03; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1794

RIN 0572–AB73

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS' implementation of the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on a greater use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a more effective and efficient manner.

DATES: Written comments must be received by RUS or bear a postmark or equivalent, no later than February 14, 2003.

ADDRESSES: Written comments should be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250–1571. Telephone (202) 720–1784. E-mail address: *lwolfe@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which requires consultation with State and local officials. *See* the final rule related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibilility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this proposed rule, if adopted, would not have significant impact on a substantial number of small entities. The proposed rule would serve to clarify the existing regulation and to change the existing classification of selected minor actions to generally streamline the environmental review process for such actions. Most of the proposed changes in the proposed rule should result in modest cost savings and ease the regulatory compliance burden for affected applicants.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0117 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments of the private sector. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Program Affected

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Background

On December 11, 1998, the Rural Utilities Service (RUS) published 7 CFR Part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (63 FR 68648) covering the actions of the electric, telecommunications, and water and waste programs. Based on a greater emphasis within the electric industry on the use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS has

determined that several changes are necessary for its environmental review process to operate in a more effective and efficient manner.

This proposed rule contains a variety of changes from the provisions of the current rule. Most of these revisions are minor or merely intended to clarify existing RUS policy and procedure and to ensure that procedures are consistent among the three RUS programs. Other revisions expand upon the existing types of actions that are subject to environmental review or reclassify actions within categories.

Within subpart A, the term ''distributed generation'' has been added to the list of definitions and the term ''Environmental Analysis (EVAL)'' has been deleted from the list of definitions in § 1794.6. A fourth bulletin was issued in early 2002 that provides guidance in preparing for and carrying out scoping for electric generation and transmission projects that require either an environmental assessment with scoping or an environmental impact statement. Further information on the four RUS guidance bulletins is provided in § 1794.7.

Within subpart B, language clarifying RUS policy regarding the completion of RUS environmental review process for certain categories of actions has been added to § 1794.14(a).

Within subpart C, a number of additional listings to the existing classification and changes to selected listings within the existing classification are being proposed. These proposed reclassifications involve minor actions proposed by applicants, which rarely, if ever, result in significant environmental impact or public interest. These changes will streamline environmental review of minor actions, and will allow the agency to focus its resources on larger projects. RUS believes that the proposed changes will provide adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

Within § 1794.21(a), RUS proposes to add separate categories for generating facilities of less than 100 kilowatts and the co-firing of bio-fuels and refuse derived fuels at existing fossil-fueled generating stations. Within § 1794.22(a), RUS proposes to modify the capacity thresholds for distributed generation facilities at existing sites. Two new categories of proposals involving natural gas pipelines and combined cycle facilities at existing sites would be added to § 1794.22(a).

In addition to including fuel cell and combined cycle generation in the same listings as combustion turbines, RUS proposes to add three new categories of proposals within § 1794.23. Proposed length and capacity threshold changes within § 1794.23, reflect changes that would be made in § 1794.22(a). Within §§ 1794.24 and 1794.25 the only proposed change would include fuel cell and combined cycle generation in the same listing as combustion turbines.

RUS proposes to modify its procedures in subparts E through G of this part. In §§ 1794.43 and 1794.44, RUS would eliminate the requirement to publish in the **Federal Register**, notice of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) availability for electric and telecommunications proposed actions described in § 1794.23. RUS has determined that no appreciable benefit has resulted from publishing a separate **Federal Register** notice for proposals in that category. By this change the notice requirements for all three programs would be consistent for all EA proposals described in § 1794.23. Electric proposals described in § 1794.24 would still be subject to this requirement.

RUS would modify its policy regarding the use of a contractor prepared Environmental Impact Statement (EIS). Under the existing regulation, the EIS would either be developed by RUS from an applicant prepared Environmental Analysis (EVAL) or prepared with the assistance of a consultant selected by RUS. Based on its experience in recent years, RUS expects to utilize the services of a consultant selected by and working for RUS for all actions requiring the preparation of an EIS. RUS does not contemplate preparing a draft or final EIS relying on an applicant prepared EVAL, as currently stated in § 1794.61(b). Therefore, RUS proposes to delete § 1794.61(b). Also, the applicant submitted document for all proposals will be titled an environmental report (ER). Previously, the applicant supplied document for a § 1794.24 proposal was an EVAL. These proposed changes would affect §§ 1794.50, 1794.52 through 1794.54, and 1794.61.

List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended by revising part 1794 to read as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

1. The authority citation for part 1794 continues to read as follows:

Authority: 7 U.S.C. 6941 *et seq.,* 42 U.S.C. 4321 *et seq.;* 40 CFR Parts 1500–1508.

2. Section 1794.6 is amended by:

A. Removing the definition for ''Environmental Analysis (EVAL)'';

B. Adding the definition for ''Distributed Generation'', and

C. Amending the definition for ''Environmental Report (ER) by revising the first sentence.

These amendments are to read as follows:

§ 1794.6 Definitions.

* * * * *

Environmental Report (ER). The environmental documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 through 1794.24. * * * * * * * * *

Distributed Generation. The generation of electricity by a sufficiently small electric generating system as to allow interconnection of the system near the point of service at distribution voltages or customer voltages. A distributed generating system may be fueled by any source, including but not limited to renewable energy sources.

* * * * *

3. Section 1794.7(a) is revised to read as follows:

§ 1794.7 Guidance.

(a) *Electric and Telecommunications Programs.* For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1724A–600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)); RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b) and (c)); and RUS Bulletin 1794A–603 provides guidance in conducting scoping for proposed actions classified as requiring an EA with scoping or an EIS. Copies of these bulletins are available upon request by contacting the Rural Utilities Service, Publications Office, Program Development and Regulatory Analysis, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

* * * * *

4. Section 1794.15(a) is amended by adding new paragraphs (a)(1), (a)(2), and (a)(3), to read as follows:

§ 1794.15 Limitations on actions during the NEPA process.

(a) * * *

(1) A categorical exclusion determination has been made for proposals listed under §§ 1794.21 and 1794.22.

(2) Applicant notices announcing the RUS FONSI determination have been published for proposals listed under §§ 1794.23 and 1794.24.

(3) Applicant notices announcing the RUS Record of Decision have been published for proposals listed under § 1794.25.

* * * * *

5. Section 1794.21 is amended by adding new paragraphs (b)(25) and (26) to read as follows:

§ 1794.21 Categorically excluded proposals without an ER.

* * * * *

(b) * * *

(25) Electric generating facilities of less than 100 kilowatts at any one site for the purpose of providing limited service to customers or facilities such as stock tanks and irrigation pumps.

(26) New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels. A description of the facilities to be constructed shall be provided to RUS.

* * * * *

6. Section 1794.22 is amended by revising paragraphs (a)(8) and (9) and by adding new paragraphs (a)(12) and (13) to read as follows:

§ 1794.22 Categorically excluded proposals requiring an ER.

(a) * * *

(8) Construction of distributed generation totaling 10 MW or less at an existing utility, industrial, commercial or educational facility site. There is no capacity limit for a generating facility located at or adjacent to an existing landfill site that is powered by refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Installation of new generating units or the replacement of existing generating units at a hydroelectric facility or dam which result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

* * * * *

(12) Installing a heat recovery steam generator and steam turbine with a rating of 200 MW or less on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the ER.

(13) Construction of a natural gas pipeline (ten miles or less in length) to serve an existing gas-fueled generating facility.

* * * * *

7. Section 1794.23 is amended by:

A. Revising paragraphs (c)(1), (c)(2), and (c)(3), and

B. Adding new paragraphs (c)(12) and (c)(13)

This revision and additions are to read as follows:

§ 1794.23 Proposals normally requiring an EA.

* * * * *

(c) * * *

(1) Construction of fuel cell, combustion turbine, combined cycle, or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(2) Construction of fuel cell, combustion turbine, combined cycle, or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facility of 20 MW (nameplate rating) or less, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

* * * * *

(12) Installing a heat recovery steam generator and steam turbine with a rating of more than 200 MW on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the EA.

(13) Construction of a natural gas pipeline (more than ten miles in length) to serve an existing gas-fueled generating facility.

8. Section 1794.24(b)(2) is revised to read as follows:

§ 1794.24 Proposals normally requiring an EA with scoping.

* * * * *

(b) * * *

(2) Construction of fuel cell, combustion turbine, combined cycle, and diesel generating facilities of more than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 20 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

* * * * *

9. Section 1794.25(a)(1) is revised to read as follows:

§ 1794.25 Proposals normally requiring an EIS.

* * * * *

(a) * * *

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than fuel cell, combustion turbine, combined cycle, or diesel generators. All new associated facilities and related electric power lines shall be covered in the EIS; and

* * * * *

§ 1794.43 [Amended]

10. Amend § 1794.43 by:

A. Removing paragraph (b), and

B. Amending paragraph (a) by removing the paragraph designation and the heading ''General''.

11. Section 1794.44 is revised to read as follows:

§ 1794.44 Timing of agency action.

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of the applicant notices that a FONSI has been made and any required review period has expired. When substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI determination. Final action shall not be taken until this review period has expired.

12. Section 1794.50 is revised to read as follows:

§ 1794.50 Normal sequence.

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with Scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed actions normally requiring an EIS through the point at where project scoping has been completed. Following project scoping, RUS will make a judgment to have an EA prepared or contract for the preparation of an EIS.

13. Section 1794.51(a) is revised to read as follows:

§ 1794.51 Preparation for scoping.

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS shall have its notice of intent to prepare an EA or EIS and schedule scoping meetings (§ 1794.13) published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

* * * * *

14. Section 1794.52(d) is amended by removing the last sentence and adding a new sentence at the end of the paragraph to read as follows:

§ 1794.52 Scoping meetings.

* * * * *

(d) * * * The applicant or its consultant shall prepare a record of the scoping meeting. The record shall consist of a transcript when a traditional meeting format is used or a summary report when an open house format is used.

* * * * *

15. Section 1794.53 is revised to read as follows:

§ 1794.53 Environmental report.

(a) After scoping procedures have been completed, RUS shall require the applicant to develop and submit an ER. The ER shall be prepared under the supervision and guidance of RUS staff and RUS shall evaluate and be responsible for the accuracy of all information contained therein.

(b) The applicant's ER will normally serve as the RUS EA. After RUS has reviewed and found the ER to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the ER to satisfy the RUS distribution plan.

(c) The ER shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information, and shall be incorporated by summary or reference into the FONSI.

16. Section 1794.54 is revised to read as follows:

§ 1794.54 Agency determination.

Following the scoping process and the development of a satisfactory ER by the applicant or its consultant that will serve as the agency's EA, RUS shall determine whether the proposed action is a major Federal action significantly affecting the quality of the human environment. If RUS determines the action is significant, RUS will continue with the procedures in subpart G of this part. If RUS determines the action is not significant, RUS will proceed in accordance with §§ 1794.42 through 1794.44, except that RUS shall have a notice published in the **Federal Register** that announces the availability of the EA and FONSI.

§ 1794.61 [Amended]

17. Section 1794.61 is amended by:

A. Removing paragraph (b).

B. Redesignating paragraph (a) as the introductory text; paragraph (a)(1) as (a); paragraph (a)(2) as (b); and paragraph (a)(3) as (c).

Dated: December 24, 2002.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–713 Filed 1–14–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, and 401

[FRL–7439–8]

RIN 2040–AB74

Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of ''Waters of the United States''

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are today issuing an advance notice of proposed rulemaking (ANPRM) in order to obtain early comment on issues associated with the scope of waters that are subject to the Clean Water Act (CWA), in light of the U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) *(SWANCC).*

Today's ANPRM requests public input on issues associated with the definition of ''waters of the United States'' and also solicits information or data from the general public, the scientific community, and Federal and State resource agencies on the implications of the *SWANCC* decision for jurisdictional decisions under the CWA. The goal of the agencies is to develop proposed regulations that will further the public interest by clarifying what waters are subject to CWA jurisdiction and affording full protection to these waters through an appropriate focus of Federal and State resources consistent with the CWA. The input received from the public in response to today's ANPRM will be used by the agencies to determine the issues to be addressed and the substantive approach for a future proposed rulemaking addressing the scope of CWA jurisdiction.

Pending this rulemaking, should questions arise, the regulated community should seek assistance from the Corps and EPA, in accordance with the joint memorandum attached as Appendix A.

DATES: In order to be considered, comments or information in response to this ANPRM must be postmarked or e-mailed on or before March 3, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Mail comments to: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0050.

FOR FURTHER INFORMATION CONTACT: For information on this ANPRM, contact either Donna Downing, U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds (4502T), 1200 Pennsylvania Avenue N.W., Washington, DC 20460, phone: (202) 566–1366, e-mail: *CWAwaters@epa.gov,* or Ted Rugiel, U.S. Army Corps of Engineers, ATTN CECW–OR, 441 G Street NW., Washington, DC 20314–1000, phone: (202) 761–4595, e-mail: *Thaddeus.J.Rugiel@HQ02.USACE.ARMY.MIL.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Potentially Regulated Entities

Persons or entities that discharge pollutants (including dredged or fill material) to ''waters of the U.S.'' could be regulated by a rulemaking based on this ANPRM. The CWA generally prohibits the discharge of pollutants into ''waters of the U.S.'' without a permit issued by EPA or a State or Tribe approved by EPA under section 402 of the Act, or, in the case of dredged or fill material, by the Corps or an approved

State or Tribe under section 404 of the Act. In addition, under the CWA, States or approved Tribes establish water quality standards for ''waters of the U.S.'', and also may assume responsibility for issuance of CWA permits for discharges into waters and wetlands subject to the Act. Today's ANPRM seeks public input on what, if any, revisions in light of SWANCC might be appropriate to the regulations that define ''waters of the U.S.'', and today's ANPRM thus would be of interest to all entities discharging to, or regulating, such waters. In addition, because the Oil Pollution Act (OPA) is applicable to waters and wetlands subject to the CWA, today's ANPRM may have implications for persons or entities subject to the OPA. Examples of entities potentially regulated include:

Category	Examples of potentially regulated entities
State/Tribal governments or instrumentalities.	State/Tribal agencies or instrumentalities that discharge or spill pollutants into waters of the U.S.
Local governments or instrumentalities.	Local governments or instrumentalities that discharge or spill pollutants into waters of the U.S.
Federal government agencies or instrumentalities.	Federal government agencies or instrumentalities that discharge or spill pollutants into waters of the U.S.
Industrial, commercial, or agricultural entities.	Industrial, commercial, or agricultural entities that discharge or spill pollutants into waters of the U.S.
Land developers and landowners.	Land developers and landowners that discharge or spill pollutants into waters of the U.S.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are likely to be regulated by a rulemaking based on this ANPRM. This table lists the types of entities that we are now aware of that could potentially be regulated. Other types of entities not listed in the table could also be regulated. To determine whether your organization or its activities could be regulated, you should carefully examine the discussion in this ANPRM. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The agencies have established an official public docket for this action under Docket ID No. OW–2002–0050. The official public docket consists of the documents specifically referenced in this ANPRM, any public comments received, and other information related to this ANPRM. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. You may have to pay a reasonable fee for copying.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the Federal Register listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select search, then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B.1.

For those who submit public comments, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (OW–2002–0050) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked late. The agencies are not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket,

and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the agencies may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select search, and then key in Docket ID No. OW–2002–0050. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *CWAwaters@epa.gov*, Attention Docket ID No. OW–2002–0050. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send four copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. OW–2002–0050.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. OW–2002–0050. Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.B.1.

D. What Should I Consider as I Prepare My Comments?

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide any technical information and/or data on which you based your views.

d. If you estimate potential burden or costs, explain how you arrived at your estimate.

e. Provide specific examples to illustrate your concerns.

f. Offer alternatives.

g. Make sure to submit your comments by the comment period deadline identified.

h. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. The Importance of Updating the Regulations

The agencies have not engaged in a review of the regulations with the public concerning CWA jurisdiction for some time. This ANPRM will help ensure that the regulations are consistent with the CWA and the public understands what waters are subject to CWA jurisdiction. The goal of the agencies is to develop proposed regulations that will further the public interest by clarifying what waters are subject to CWA jurisdiction and affording full protection to these waters through an appropriate focus of Federal and State resources consistent with the CWA. It is appropriate to review the regulations to ensure that they are consistent with the *SWANCC* decision. *SWANCC* eliminates CWA jurisdiction over isolated waters that are intrastate and non-navigable, where the sole basis for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross State lines in their migrations. *SWANCC* also calls into question whether CWA jurisdiction over isolated, intrastate, non-navigable waters could now be predicated on the other factors listed in the ''Migratory Bird Rule'' or the other rationales of 33 CFR 328.3(a)(3)(i)–(iii).

Although the *SWANCC* case itself specifically involves section 404 of the CWA, the Court's decision may also affect the scope of regulatory jurisdiction under other provisions of the CWA, including programs under sections 303, 311, 401, and 402. Under each of these sections, the relevant agencies have jurisdiction over ''waters of the United States.'' The agencies will consider the potential implications of the rulemaking for these other sections.

- *Section 404 dredged and fill material permit program.* This program establishes a permitting system to regulate discharges of dredged or fill material into waters of the United States.
- *Section 303 water quality standards program.* Under this program, States and authorized Indian Tribes establish water quality standards for navigable waters to ''protect the public health or welfare'' and ''enhance the quality of water'', ''taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agriculture, industrial, and other purposes, and also taking into consideration their use and value for navigation.''
- *Section 311 spill program and the Oil Pollution Act (OPA).* Section 311 of the CWA addresses pollution from both oil and hazardous substance releases. Together with the Oil Pollution Act, it provides EPA and the U.S. Coast Guard with the authority to establish a program for preventing, preparing for, and responding to spills that occur in navigable waters of the United States.
- *Section 401 State water-quality certification program.* Section 401 provides that no Federal permit or license for activities that might result in a discharge to navigable waters may be issued unless a section 401 water-quality certification is obtained from or waived by States or authorized Tribes.
- *Section 402 National Pollutant Discharge Elimination System (NPDES) permitting program.* This program establishes a permitting system to regulate point source discharges of pollutants (other than dredged or fill material) into waters of the United States.

III. Legislative and Regulatory Context

The Federal Water Pollution Control Act Amendments, now known as the Clean Water Act (CWA), was enacted in 1972. In the years since its enactment, the scope of waters regulated under the CWA has been discussed in regulations, legislation, and judicial decisions.

The CWA was intended to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). Its specific provisions were designed to improve upon the protection of the Nation's waters provided under earlier statutory schemes such as the Rivers and Harbors Act of 1899 (''RHA'') (33 U.S.C. 403, 407, 411) and the Federal Water Pollution Control Act of 1948 (62 Stat. 1155) and its subsequent amendments through 1970. In doing so, Congress recognized ''the primary responsibilities and rights of States to prevent, reduce,

and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources * * *'' 33 U.S.C. 1251(b).

The jurisdictional scope of the CWA is ''navigable waters,'' defined in the statute as ''waters of the United States, including the territorial seas.'' CWA section 502(7), 33 U.S.C. 1362(7). The existing CWA section 404 regulations define ''waters of the United States'' as follows:

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) which are used or could be used for industrial purposes by industries in interstate commerce.

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a)(1)–(4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)–(6) of this section.

(8) Waters of the United States do not include prior converted cropland ... Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds ...) are not waters of the United States. 40 CFR.230.3(s); 33 CFR 328.3(a).

Counterpart and substantively similar regulatory definitions appear at 40 CFR 110.1, 112.2, 116.3, 117.1, 122.2, 232.2, 300.5, part 300 App. E, 302.3 and 401.11 (hereafter referred to as ''the counterpart definitions'').

In regulatory preambles, both the Corps and EPA provided examples of additional types of links to interstate commerce which might serve as a basis under 40 CFR 230.3(a)(3) and 33 CFR 328.3(a)(3) for establishing CWA jurisdiction over intrastate waters which were not part of the tributary system or their adjacent wetlands. These included use of waters (1) as habitat by birds protected by Migratory Bird Treaties or which cross State lines, (2) as habitat for endangered species, or (3) to irrigate crops sold in commerce. 51 FR 41217 (November 13, 1986), 53 FR 20765 (June 6, 1988). These examples became known as the ''Migratory Bird Rule,'' even though the examples were neither a rule nor entirely about birds. The Migratory Bird Rule later became the focus of the *SWANCC* case.

IV. Potential Natural Resource Implications

To date, some quantitative studies and anecdotal data provide early estimates of potential resource implications of the *SWANCC* decision. One of the purposes of the ANPRM is to solicit additional information, data, or studies addressing the extent of resource impacts to isolated, intrastate, non-navigable waters.

Non-navigable intrastate isolated waters occur throughout the country. Their extent depends on a variety of factors including topography, climate, and hydrologic forces. Preliminary assessments of potential resource impacts vary widely depending on the scenarios considered. See, *e.g.*, Ducks Unlimited, ''The SWANCC Decision: Implications for Wetlands and Waterfowl'' (September 2001) (available at *http://www.ducks.org/conservation/404_report.asp*); ASWM, ''SWANCC Decision and the State Regulation of Wetlands,'' (June 2001) (available at *http://www.aswm.org*).

There is an extensive body of knowledge about the functions and values of wetlands, which include flood risk reduction, water quality improvement, fish and wildlife habitat, and maintenance of the hydrologic integrity of aquatic ecosystems. The ANPRM seeks information regarding the functions and values of wetlands and other waters that may be affected by the issues discussed in this ANPRM.

V. Solicitation of Comments

The agencies are seeking comment on issues related to the jurisdictional status of isolated waters under the CWA which the public wishes to call to our attention. To assist the public in considering these issues, the following discussion and specific questions are presented. The agencies will carefully consider the responses received to this ANPRM in determining what regulatory changes may be appropriate and the issues to be addressed in a proposed rulemaking to clarify CWA jurisdiction.

The *SWANCC* holding eliminates CWA jurisdiction over isolated, intrastate, non-navigable waters where the sole basis for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross State lines in their migrations. 531 U.S. at 174 (''We hold that 33 CFR 328.3(a)(3) (1999), as clarified and applied to petitioner's balefill site pursuant to the ''Migratory Bird Rule,'' 51 FR 41217 (1986), exceeds the authority granted to respondents under section 404(a) of the CWA.''). The agencies seek comment on the use of the factors in 33 CFR 328.3(a)(3)(i)–(iii) or the counterpart regulations in determining CWA jurisdiction over isolated, intrastate, non-navigable waters.

The agencies solicit comment from the public on the following issues:

(1) Whether, and, if so, under what circumstances, the factors listed in 33 CFR 328.3(a)(3)(i)–(iii) (*i.e.*, use of the water by interstate or foreign travelers for recreational or other purposes, the presence of fish or shellfish that could be taken and sold in interstate commerce, the use of the water for industrial purposes by industries in interstate commerce) or any other factors provide a basis for determining CWA jurisdiction over isolated, intrastate, non-navigable waters?

(2) Whether the regulations should define ''isolated waters,'' and if so, what factors should be considered in determining whether a water is or is not isolated for jurisdictional purposes?

Solicitation of Information

In answering the questions set forth above, please provide, as appropriate, any information (*e.g.*, scientific and technical studies and data, analysis of environmental impacts, effects on interstate commerce, other impacts, etc.) supporting your views, and specific recommendations on how to implement such views. Additionally, we invite your views as to whether any other revisions are needed to the existing regulations on which waters are jurisdictional under the CWA. As noted elsewhere in this document, the agencies are also soliciting data and information on the availability and effectiveness of other Federal or State programs for the protection of aquatic resources, and on the functions and values of wetlands and other waters that may be affected by the issues discussed in this ANPRM.

VI. Related Federal and State Authorities

The *SWANCC* decision addresses CWA jurisdiction, and other Federal or

State laws and programs may still protect a water and related ecosystem even if that water is no longer jurisdictional under the CWA following *SWANCC*. The Federal government remains committed to wetlands protection through the Food Security Act's Swampbuster requirements and Federal agricultural program benefits and restoration through such Federal programs as the Wetlands Reserve Program (administered by the U.S. Department of Agriculture), grant making programs such as Partners in Wildlife (administered by the Fish and Wildlife Service), the Coastal Wetlands Restoration Program (administered by the National Marine Fisheries Service), the State Grant, Five Star Restoration, and National Estuary Programs (administered by EPA), and the Migratory Bird Conservation Commission (composed of the Secretaries of Interior and Agriculture, the Administrator of EPA and Members of Congress).

The *SWANCC* decision also highlights the role of States in protecting waters not addressed by Federal law. Prior to *SWANCC*, fifteen States had programs that addressed isolated wetlands. Since *SWANCC*, additional States have considered, and two have adopted, legislation to protect isolated waters. The Federal agencies have a number of initiatives to assist States in these efforts to protect wetlands. For example, EPA's Wetland Program Development Grants are available to assist States, Tribes, and local governments for building their wetland program capacities. In addition, the U.S. Department of Justice and other Federal agencies co-sponsored a national wetlands conference with the National Governors Association Center for Best Practices, National Conference of State Legislatures, the Association of State Wetlands Managers, and the National Association of Attorneys General. This conference and the dialogue that has ensued will promote close collaboration between Federal agencies and States in developing, implementing, and enforcing wetlands protection programs. EPA also is providing funding to the National Governors Association Center for Best Practices to assist States in developing appropriate policies and actions to protect intrastate isolated waters.

In light of this, the agencies solicit information and data from the general public, the scientific community, and Federal and State resource agencies on the availability and effectiveness of other Federal or State programs for the protection of aquatic resources and practical experience with their implementation. The agencies are also interested in data and comments from State and local agencies on the effect of no longer asserting jurisdiction over some of the waters (and discharges to those waters) in a watershed on the implementation of Total Maximum Daily Loads (TMDLs) and attainment of water quality standards.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA and the Corps must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this Advanced Notice of Proposed Rulemaking is a ''significant regulatory action'' in light of the provisions of paragraph (4) above as it raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. National Environmental Policy Act

As required by the National Environmental Policy Act (NEPA), the Corps prepares appropriate environmental documentation for its activities affecting the quality of the human environment. The Corps has determined that today's Advance Notice of Proposed Rulemaking merely solicits early comment on issues associated with the scope of waters that are properly subject to the CWA, and information or data from the general public, the scientific community, and Federal and State resource agencies on the implications of the *SWANCC* decision for the protection of aquatic resources. In light of this, the Corps has determined that today's ANPRM does not constitute a major Federal action significantly affecting the quality of the human environment, and thus does not require the preparation of an Environmental Impact Statement (EIS).

Dated: January 10, 2003.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

Dated: January 10, 2003.

R.L. Brownlee,

Acting Assistant Secretary of the Army, (Civil Works), Department of the Army.

Note: The following guidance document will not appear in the Code of Federal Regulations.

Appendix A

Joint Memorandum

Introduction

This document provides clarifying guidance regarding the Supreme Court's decision in *Solid Waste Agency of Northern Cook County* v. *United States Army Corps of Engineers,* 531 U.S. 159 (2001) (''SWANCC'') and addresses several legal issues concerning Clean Water Act (''CWA'') jurisdiction that have arisen since *SWANCC* in various factual scenarios involving federal regulation of ''navigable waters.'' Because the case law interpreting *SWANCC* has developed over the last two years, the Agencies are issuing this updated guidance, which supersedes prior guidance on this issue. The Corps and EPA are also initiating a rulemaking process to collect information and to consider jurisdictional issues as set forth in the attached ANPRM. Jurisdictional decisions will be based on Supreme Court cases including *United States* v. *Riverside Bayview Homes,* 474 U.S. 121 (1985) and *SWANCC,* regulations, and applicable case law in each jurisdiction.

Background

In *SWANCC,* the Supreme Court held that the Army Corps of Engineers had exceeded its authority in asserting CWA jurisdiction pursuant to section 404(a) over isolated, intrastate, non-navigable waters under 33 C.F.R. 328.3(a)(3), based on their use as habitat for migratory birds pursuant to preamble language commonly referred to as the ''Migratory Bird Rule,'' 51 FR 41217 (1986). ''Navigable waters'' are defined in section 502 of the CWA to mean ''waters of the United States, including the territorial seas.'' In *SWANCC,* the Court determined that the term ''navigable'' had significance in indicating the authority Congress intended to exercise in asserting CWA jurisdiction. 531 U.S. at 172. After reviewing the jurisdictional scope of the statutory definition of ''navigable waters'' in section 502, the Court concluded that neither the text of the statute nor its legislative history supported the

Corps' assertion of jurisdiction over the waters involved in *SWANCC. Id.* at 170–171.

In *SWANCC,* the Supreme Court recognized that ''Congress passed the CWA for the stated purpose of 'restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters' '' and also noted that ''Congress chose to 'recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources.' '' *Id.* at 166–67 (citing 33 U.S.C. 1251(a) and (b)). However, expressing ''serious constitutional and federalism questions'' raised by the Corps' interpretation of the CWA, the Court stated that ''where an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result.'' *Id.* at 174, 172. Finding ''nothing approaching a clear statement from Congress that it intended section 404(a) to reach an abandoned sand and gravel pit'' (*id.* at 174), the Court held that the Migratory Bird Rule, as applied to petitioners' property, exceeded the agencies' authority under section 404(a). *Id.* at 174.

The Scope of CWA Jurisdiction After SWANCC

Because *SWANCC* limited use of 33 CFR § 328.3(a)(3) as a basis of jurisdiction over certain isolated waters, it has focused greater attention on CWA jurisdiction generally, and specifically over tributaries to jurisdictional waters and over wetlands that are ''adjacent wetlands'' for CWA purposes.

As indicated, section 502 of the CWA defines the term navigable waters to mean ''waters of the United States, including the territorial seas.'' The Supreme Court has recognized that this definition clearly includes those waters that are considered traditional navigable waters. In *SWANCC,* the Court noted that while ''the word 'navigable' in the statute was of 'limited import' '' (quoting *Riverside,* 474 U.S. 121 (1985)), ''the term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made.'' 531 U.S. at 172. In addition, the Court reiterated in *SWANCC* that Congress evidenced its intent to regulate ''at least some waters that would not be deemed 'navigable' under the classical understanding of that term.'' *SWANCC* at 171 (quoting *Riverside,* 474 U.S. at 133). Relying on that intent, for many years, EPA and the Corps have interpreted their regulations to assert CWA jurisdiction over non-navigable tributaries of navigable waters and their adjacent wetlands. Courts have upheld the view that traditional navigable waters and, generally speaking, their tributary systems (and their adjacent wetlands) remain subject to CWA jurisdiction.

Several federal district and appellate courts have addressed the effect of *SWANCC* on CWA jurisdiction, and the case law on the precise scope of federal CWA jurisdiction in light of *SWANCC* is still developing. While a majority of cases hold that *SWANCC* applies only to waters that are isolated, intrastate and non-navigable, several courts have interpreted *SWANCC*'s reasoning to apply to waters other than the isolated waters at issue in that case. This memorandum attempts to add greater clarity concerning federal CWA jurisdiction following *SWANCC* by identifying specific categories of waters, explaining which categories of waters are jurisdictional or non-jurisdictional, and pointing out where more refined factual and legal analysis will be required to make a jurisdictional determination.

Although the *SWANCC* case itself specifically involved Section 404 of the CWA, the Court's decision may affect the scope of regulatory jurisdiction under other provisions of the CWA as well, including the Section 402 NPDES program, the Section 311 oil spill program, water quality standards under Section 303, and Section 401 water quality certification. Under each of these sections, the relevant agencies have jurisdiction over ''waters of the United States.'' CWA section 502(7).

This memorandum does not discuss the exact factual predicates that are necessary to establish jurisdiction in individual cases. We recognize that the field staff and the public could benefit from additional guidance on how to apply the applicable legal principles to individual cases.[1] Should questions arise concerning CWA jurisdiction, the regulated community should seek assistance from the Corps and EPA.

A. Isolated, Intrastate Waters That are Non-Navigable

SWANCC squarely eliminates CWA jurisdiction over isolated waters that are intrastate and non-navigable, where the sole basis for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross state lines in their migrations. 531 U.S. at 174 (''We hold that 33 CFR § 328.3(a)(3) (1999), as clarified and applied to petitioner's balefill site pursuant to the 'Migratory Bird Rule,' 51 FR 41217 (1986), exceeds the authority granted to respondents under § 404(a) of the CWA.''). The EPA and the Corps are now precluded from asserting CWA jurisdiction in such situations, including over waters such as isolated, non-navigable, intrastate vernal pools, playa lakes and pocosins. *SWANCC* also calls into question whether CWA jurisdiction over isolated, intrastate, non-navigable waters could now be predicated on the other factors listed in the Migratory Bird Rule, 51 FR 41217 (*i.e.*, use of the water as habitat for birds protected by Migratory Bird Treaties; use of the water as habitat for Federally protected endangered or threatened species; or use of the water to irrigate crops sold in interstate commerce).

By the same token, in light of *SWANCC,* it is uncertain whether there remains any basis for jurisdiction under the other rationales of § 328.3(a)(3)(i)–(iii) over isolated, non-navigable, intrastate waters (*i.e.*, use of the water by interstate or foreign travelers for recreational or other purposes; the presence of fish or shellfish that could be taken and sold in interstate commerce; use of the water for industrial purposes by industries in interstate commerce). Furthermore, within the states comprising the Fourth Circuit, CWA jurisdiction under 33 CFR § 328.3(a)(3) in its entirety has been precluded since 1997 by the Fourth Circuit's ruling in *United States* v. *Wilson,* 133 F. 3d 251, 257 (4th Cir. 1997) (invalidating 33 CFR § 328.3(a)(3)).

In view of *SWANCC,* neither agency will assert CWA jurisdiction over isolated waters that are both intrastate and non-navigable, where the sole basis available for asserting CWA jurisdiction rests on any of the factors listed in the ''Migratory Bird Rule.'' In addition, in view of the uncertainties after *SWANCC* concerning jurisdiction over isolated waters that are both intrastate and non-navigable based on other grounds listed in 33 CFR § 328.3(a)(3)(i)–(iii), field staff should seek formal project-specific Headquarters approval prior to asserting jurisdiction over such waters, including permitting and enforcement actions.

B. Traditional Navigable Waters

As noted, traditional navigable waters are jurisdictional. Traditional navigable waters are waters that are subject to the ebb and flow of the tide, or waters that are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. 33 CFR § 328.3(a)(1); *United States* v. *Appalachian Elec. Power Co.,* 311 U.S. 377, 407–408 (1940) (water considered navigable, although not navigable at present but could be made navigable with reasonable improvements); *Economy Light & Power Co.* v. *United States,* 256 U.S. 113 (1911) (dams and other structures do not eliminate navigability); *SWANCC,* 531 U.S. at 172 (referring to traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made).[2]

In accord with the analysis in *SWANCC,* waters that fall within the definition of traditional navigable waters remain jurisdictional under the CWA. Thus, isolated, intrastate waters that are capable of supporting navigation by watercraft remain subject to CWA jurisdiction after SWANCC if they are traditional navigable waters, *i.e.*, if they meet any of the tests for being navigable-in-fact. *See, e.g., Colvin* v. *United States* 181 F. Supp. 2d 1050 (C.D. Cal. 2001) (isolated

[1] The CWA provisions and regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. It does not impose legally binding requirements on EPA, the Corps, or the regulated community, and may not apply to a particular situation depending on the circumstances. Any decisions regarding a particular water will be based on the applicable statutes, regulations, and case law. Therefore, interested person are free to raise questions and objections about the appropriateness of the application of this guidance to a particular situation, and EPA and/or the Corps will consider whether or not the recommendations or interpretations of this guidance are appropriate in that situation based on the law and regulations.

[2] These traditional navigable waters are not limited to those regulated under Section 10 of the Rivers and Harbors Act of 1899; traditional navigable waters include waters which, although used, susceptibale to use, or historically used, to transport goods or people in commerce, do not form part of a continuous wateborne highway.

man-made water body capable of boating found to be ''water of the United States'').

C. Adjacent Wetlands

(1) Wetlands Adjacent to Traditional Navigable Waters

CWA jurisdiction also extends to wetlands that are adjacent to traditional navigable waters. The Supreme Court did not disturb its earlier holding in *Riverside* when it rendered its decision in *SWANCC. Riverside* dealt with a wetland adjacent to Black Creek, a traditional navigable water. 474 U.S. 121 (1985); *see also SWANCC,* 531 U.S. at 167 (''[i]n *Riverside,* we held that the Corps had section 404(a) jurisdiction over wetlands that actually abutted on a navigable waterway''). The Court in *Riverside* found that ''Congress'; concern for the protection of water quality and aquatic ecosystems indicated its intent to regulate wetlands 'inseparably bound up with' '' jurisdictional waters. 474 U.S. at 134. Thus, wetlands adjacent to traditional navigable waters clearly remain jurisdictional after *SWANCC.* The Corps and EPA currently define 'adjacent' as ''bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are 'adjacent wetlands.' '' 33 CFR § 328.3(b); 40 CFR § 230.3(b). The Supreme Court has not itself defined the term ''adjacent,'' nor stated whether the basis for adjacency is geographic proximity or hydrology.

(2) Wetlands Adjacent to Non-Navigable Waters

The reasoning in Riverside, as followed by a number of post-SWANCC courts, supports jurisdiction over wetlands adjacent to non-navigable waters that are tributaries to navigable waters. Since SWANCC, some courts have expressed the view that SWANCC raised questions about adjacency jurisdiction, so that wetlands are jurisdictional only if they are adjacent to navigable waters. *See, e.g., Rice* v. *Harken,* discussed *infra.*

D. Tributaries

A number of court decisions have held that *SWANCC* does not change the principle that CWA jurisdiction extends to tributaries of navigable waters. *See, e.g., Headwaters* v. *Talent Irrigation Dist.,* 243 F.3d 526, 534 (9th Cir. 2001) (''Even tributaries that flow intermittently are 'waters of the United States' ''); *United States* v. *Interstate Gen. Co,* No. 01–4513, slip op. at 7, 2002 WL 1421411 (4th Cir. July 2, 2002), *aff'ing* 152 F. Supp. 2d 843 (D. Md. 2001) (refusing to grant writ of coram nobis; rejecting argument that *SWANCC* eliminated jurisdiction over wetlands adjacent to non-navigable tributaries); *United States* v. *Krilich,* 393F.3d 784 (7th Cir. 2002) (rejecting motion to vacate consent decree, finding that *SWANCC* did not alter regulations interpreting ''waters of the U.S.'' other than 33 C.F.R. § 328.3(a)(3)); *Community Ass. for Restoration of the Env't* v. *Henry Bosma Dairy,* 305 F.3d 953 (9th Cir. 2002) (drain that flowed into a canal that flows into a river is jurisdictional); *Idaho Rural Council* v. *Bosma,* 143 F. Supp. 2d 1169, 1178 (D. Idaho 2001) (''waters of the United States include waters that are tributary to navigable waters''); *Aiello* v. *Town of Brookhaven,* 136 F. Supp. 2d 81, 118 (E.D. N.Y. 2001) (non-navigable pond and creek determined to be tributaries of navigable waters, and therefore ''waters of the United States under the CWA''). Jurisdiction has been recognized even when the tributaries in question flow for a significant distance before reaching a navigable water or are several times removed from the navigable waters (*i.e.,* ''tributaries of tributaries''). *See, e.g., United States* v. *Lamplight Equestrian Ctr.,* No. 00 C 6486, 2002 WL 360652, at *8 (ND. Ill. Mar. 8, 2002) (''Even where the distance from the tributary to the navigable water is significant, the quality of the tributary is still vital to the quality of navigable waters''); *United States* v. *Buday,* 138 F. Supp. 2d 1282, 1291–92 (D. Mont. 2001) (''water quality of tributaries * * * distant though the tributaries may be from navigable streams, is vital to the quality of navigable waters''); *United States* v. *Rueth Dev. Co.,* No. 2:96CV540, 2001 WL 17580078 (N.D. Ind. Sept. 26, 2001) (refusing to reopen a consent decree in a CWA case and determining that jurisdiction remained over wetlands adjacent to a non-navigable (man-made) waterway that flows into a navigable water).

Some courts have interpreted the reasoning in *SWANCC* to potentially circumscribe CWA jurisdiction over tributaries by finding CWA jurisdiction attaches only where navigable waters and waters immediately adjacent to navigable waters are involved. *Rice* v. *Harken* is the leading case taking the narrowest view of CWA jurisdiction after *SWANCC.* 250 F.3d 264 (5th Cir. 2001) (rehearing denied). *Harken* interpreted the scope of ''navigable waters'' under the Oil Pollution Act (OPA). The Fifth Circuit relied on *SWANCC* to conclude ''it appears that a body of water is subject to regulation under the CWA if the body of water is actually navigable or is adjacent to an open body of navigable water.'' 250 F.3d at 269. The analysis in *Harken* implies that the Fifth Circuit might limit CWA jurisdiction to only those tributaries that are traditionally navigable or immediately adjacent to a navigable water.

A few post-*SWANCC* district court opinions have relied on *Harken* or reasoning similar to that employed by the Harken court to limit jurisdiction. *See, e.g., United States* v. *Rapanos,* 190 F. Supp. 2d 1011(E.D. Mich. 2002) (government appeal pending) (''the Court finds as a matter of law that the wetlands on Defendant's property were not directly adjacent to navigable waters, and therefore, the government cannot regulate Defendant's property.''); *United States* v. *Needham,* No. 6:01–CV–01897, 2002 WL 1162790 (W.D. La. Jan. 23, 2002) (government appeal pending) (district court affirmed finding of no liability by bankruptcy court for debtors under OPA for discharge of oil since drainage ditch into which oil was discharged was found to be neither a navigable water nor adjacent to an open body of navigable water). *See alsoUnited States* v. *Newdunn,* 195 F. Supp. 2d 751 (E.D. Va. 2002) (government appeal pending) (wetlands and tributaries not contiguous or adjacent to navigable waters are outside CWA jurisdiction); *United States* v. *RGM Corp.,* 222 F. Supp. 2d 780 (E.D. Va. 2002) (government appeal pending) (wetlands on property not contiguous to navigable river and, thus, jurisdiction not established based upon adjacency to navigable water).

Another question that has arisen is whether CWA jurisdiction is affected when a surface tributary to jurisdictional waters flows for some of its length through ditches, culverts, pipes, storm sewers, or similar manmade conveyances. A number of courts have held that waters with manmade features are jurisdictional. For example, in *Headwaters Inc.* v. *Talent Irrigation District,* the Ninth Circuit held that manmade irrigation canals that diverted water from one set of natural streams and lakes to other streams and creeks were connected as tributaries to waters of the United States, and consequently fell within the purview of CWA jurisdiction. 243 F.3d at 533–34. However, some courts have taken a different view of the circumstances under which man-made conveyances satisfy the requirements for CWA jurisdiction. *See, e.g., Newdunn,* 195 F. Supp. 2d at 765 (government appeal pending) (court determined that Corps had failed to carry its burden of establishing CWA jurisdiction over wetlands from which surface water had to pass through a spur ditch, a series of man-made ditches and culverts as well as non-navigable portions of a creek before finally reaching navigable waters).

A number of courts have held that waters connected to traditional navigable waters only intermittently or ephemerally are subject to CWA jurisdiction. The language and reasoning in the Ninth Circuit's decision in *Headwaters Inc.* v. *Talent Irrigation District* indicates that the intermittent flow of waters does not affect CWA jurisdiction. 243 F.3d at 534 (''Even tributaries that flow intermittently are 'waters of the United States.' ''). Other cases, however, have suggested that *SWANCC* eliminated from CWA jurisdiction some waters that flow only intermittently. *See, e.g., Newdunn,* 195 F. Supp. 2d at 764, 767–68 (government appeal pending) (ditches and culverts with intermittent flow not jurisdictional).

A factor in determining jurisdiction over waters with intermittent flows is the presence or absence of an ordinary high water mark (OHWM). Corps regulations provide that, in the absence of adjacent wetlands, the lateral limits of non-tidal waters extend to the OHWM (33 CFR 328.4(c)(1)). One court has interpreted this regulation to require the presence of a continuous OHWM. *United States* v. *RGM,* 222 F. Supp. 2d 780 (E.D. Va. 2002) (government appeal pending).

Conclusion

In light of *SWANCC,* field staff should not assert CWA jurisdiction over isolated waters that are both intrastate and non-navigable, where the sole basis available for asserting CWA jurisdiction rests on any of the factors listed in the ''Migratory Bird Rule.'' In addition, field staff should seek formal project-specific HQ approval prior to asserting jurisdiction over waters based on

other factors listed in 33 CFR 328.3(a)(3)(i)–(iii).

Field staff should continue to assert jurisdiction over traditional navigable waters (and adjacent wetlands) and, generally speaking, their tributary systems (and adjacent wetlands). Field staff should make jurisdictional and permitting decisions on a case-by-case basis considering this guidance, applicable regulations, and any additional relevant court decisions. Where questions remain, the regulated community should seek assistance from the agencies on questions of jurisdiction.

Robert E. Fabricant,

General Counsel, Environmental Protection Agency.

Steven J. Morello,

General Counsel, Department of the Army.

[FR Doc. 03–960 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN140–1b; FRL–7433–6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to conditionally approve rules submitted by the State of Indiana as revisions to its State Implementation Plan(SIP) for prevention of significant deterioration (PSD) provisions for attainment areas for the Indiana Department of Environmental Management.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by February 14, 2003.

ADDRESSES: Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State's request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

I. What Action Is EPA Taking Today?

The EPA is proposing to conditionally approve rules submitted by the State of Indiana as revisions to its State Implementation Plan (SIP) for prevention of significant deterioration (PSD) provisions for attainment areas for the Indiana Department of Environmental Management.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: December 18, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–617 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD137–3090b; FRL–7420–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revision to the Control of Volatile Organic Compound Emissions From Screen Printing and Digital Imaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland establishing reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from an overprint varnish that is used in the cosmetic industry. This action also proposes to add new definitions and amend certain existing definitions for terms used in the regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 14, 2003.

ADDRESSES: Written comments should be addressed to Walter Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, at the EPA Region III address above, or by e-mail at *wentworth.ellen@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action pertaining to the establishment of a VOC limit for an overprint varnish used in the cosmetic industry throughout the state of Maryland with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–730 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[WT Docket No. 01–90; ET Docket No. 98–95; RM–9096; FCC 02–302]

Regarding Dedicated Short-Range Communication Services in the 5.850–5.925 GHz Band (5.9 GHz Band)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, a notice of proposed rulemaking, the Federal Communications Commission (FCC) proposes service rules for the Dedicated Short-Range Communications Systems in the 5.850–5.925 GHz band (5.9 GHz band) to govern the licensing and use of this band. The NPRM seeks public comment on numerous issues concerning the service rules.

DATES: Comments are due on or before March 17, 2003, and reply comments are due on or before April 15, 2003.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek at (202) 418–7590, Gerardo Mejia at (202) 418–2895 or via e-mail at *nzaczek@fcc.gov* or *gmejia @fcc.gov*, or via TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Notice of Proposed Rulemaking*, FCC 02–302, adopted on November 7, 2002, and released on November 15, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. In this *Notice of Proposed Rulemaking and Order* (*NPRM and Order*), the FCC propose service rules to govern the licensing and use of the 5.850–5.925 GHz band (5.9 GHz band) for Dedicated Short-Range Communications (DSRC) services in the Intelligent Transportation System (ITS) radio service. Specifically in this *NPRM and Order:*

- The FCC proposes to permit entities providing public safety DSRC operations to use the 5.9 GHz band;
- For public safety entities, the FCC proposes to apply the application, licensing and processing rules under part 90 of the FCC's rules;

2. The FCC generally seeks comment on the following issues:

- Whether to license Roadside Units (RSUs) by site or geographic area;
- Whether to permit non-public safety radio DSRC operations in the 5.9 GHz band:
- In the event that the FCC allows non-public safety radio applications in the 5.9 GHz band and in the event that the licensing scheme the FCC selects for those ITS applications results in mutually exclusive licenses, the FCC proposes to apply competitive bidding procedures under the FCC's part 1 competitive bidding rules;
- The definition of public safety in the context of ITS;
- The definition of Dedicated Short-Range Communication Service (DSRCS);
- The interoperability necessary for DSRC operations and how this interoperability should be achieved;
- Whether to license On Board Units (OBUs) associated with fixed systems under the associated RSU license;
- Whether the OBUs not associated with a fixed system should be licensed by rule or unlicensed under part 15;
- The appropriate licensing scheme or schemes for this band;
- Various channelization plans;
- Various technical matters; and
- Use of this band in Mexican and Canadian border areas.

3. Dismissal of Petitions for Reconsideration. Further, the FCC also seeks comment on issues raised by two Petitions for Reconsideration or Clarification of the Allocation Report and Order. PanAmSat sought reconsideration of the FCC's decision that prior coordination between DSRC operations applications and Fixed Satellite Service (FSS) uplinks is unnecessary. Mark IV Industries sought reconsideration or clarification of the power levels and emission mask requirements established in the Allocation Report and Order. The FCC dismisses these two petitions for reconsideration as moot because the FCC is seeking comment on the issues raised through this NPRM, and, with the benefit of a fuller record, will address those issues in this proceeding, *i.e.*, WT Docket 01–90.

I. Procedural Matters

A. Initial Regulatory Flexibility Analysis

4. The FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking; it is contained further. The FCC requests written public comment on the analysis. Comments must be filed in accordance with the same filing deadlines as comments filed in response to the notice of proposed rulemaking, and must have a separate and distinct heading designating them as responses to the IRFA. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this notice of proposed rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Analysis

5. This NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, the FCC invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due March 17, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the FCC, including whether the information shall have practical utility; (b) the accuracy of the FCC's burden estimates; (c) ways to

enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

6. Written comments by the public on the proposed information collections are due March 17, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before March 17, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbHerman@fcc.gov* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *jthornto@mb.eop.gov*.

C. Ex Parte Presentations

7. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the FCC's rules.

D. Comment Dates

8. Pursuant to §§ 1.415 and 1.419 of the FCC's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 17, 2003, and reply to comments on or before April 15, 2003. Comments may be filed using the FCC's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121(1998).

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, *i.e.* WT Docket 01–90, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the FCC continues to experience delays in receiving U.S. Postal Service mail). The FCC's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the FCC's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the FCC's Secretary, Office of the Secretary, Federal Communications Commission.

II. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (''RFA''), the FCC has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in the notice of proposed rulemaking (NPRM), WT Docket No. 01–90. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM as provided above. The FCC will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

11. In this NPRM, the FCC proposes licensing, service, and operating rules for the 5.850–5.925 GHz band for use by Dedicated Short Range Communications (DSRC) Services in the provision of Intelligent Transportation Systems (ITS) services. DSRC communications are used for the non-voice wireless transfer of data over short distances between roadside and mobile units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety, and other intelligent transportation service applications in a variety of environments. This action is taken as a follow-up to the Allocation Report and Order, in which the FCC stated that it would defer licensing and service rules to a later proceeding.

B. Legal Basis for Proposed Rules

12. The proposed action is authorized under sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the FCC

estimates that 81,600 (96%) are small entities.

14. With respect to the 5.9 GHz band, the FCC has not yet determined how many licenses will be awarded. Moreover, the FCC does not yet know how many applicants or licensees will be small entities. The FCC therefore assume that, for purposes of the FCC's evaluations and conclusions in the IRFA, all prospective licensees are small entities, as that term is defined by the SBA or by the FCC's proposed small business definitions for these bands. The FCC invites comment on this analysis.

15. In addition, the FCC notes that the SBA has developed size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS codes 517211, 517212. According to the FCC's most recent Telephone Trends Report data, 1,761 companies reported that they were engaged in the provision of wireless service. Telephone Trends Report, Table 5.3. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Id. Consequently, the FCC estimates that most wireless service providers are small entities.

16. The FCC has not developed a definition of small entities specifically applicable to Dedicated Short-Range Communications Manufacturers (DSRC Manufacturers). However, the SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees. Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers to total manufacturers in this category is approximately 61.35%, so the FCC estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the FCC estimates that the great majority of wireless communications equipment manufacturers are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. In the NPRM, the FCC seeks comment on whether to designate a portion of the band for public safety and non-public safety radio. Should the FCC decide to license a portion of the 5.9 GHz band for public safety purposes, those licensees will be required to submit an application through the Universal Licensing System using form 601. Other possible requirements include complying with part 90 of the FCC's rules and part 15 of the agency's rules if unlicensed operations are permitted.

18. Should the FCC adopt a licensing scheme that results in mutually exclusive applications, applicants for licenses will be required to submit short-form auction applications using FCC form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using FCC form 601, and other appropriate forms. Licensees will also be required to apply for an individual station license by filing FCC form 601 for those individual stations that (1) require submission of an Environmental Assessment under section 1.1307 of the FCC's rules; (2) require international coordination; (3) would operate in the quiet zones listed in section 1.924 of the FCC's rules; or (4) require coordination with the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). Licensees will be required to identify on form 601 the type of service or services they intend to provide. The FCC seeks comment of how these filing requirements can be modified to reduce the burden on small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. The FCC has reduced the burdens wherever possible. To minimize any negative impact, however, the FCC propose certain incentives for small entities that will redound to their benefit. The FCC proposes the use of bidding credits for small entities that participate in auctions of licenses that are conducted pursuant to the rules proposed in this NPRM. The FCC proposes to define a ''small business'' as an entity with average annual gross revenues for the preceding three years not to exceed $15 million and a ''very small business'' as an entity with average gross revenues for the preceding three years not to exceed $3 million. The FCC believes that these bidding credits will help small entities compete in FCC auctions and acquire licenses. The FCC seeks comment on its proposed small business definitions and bidding credits, including information on factors that may affect the capital requirements of the type of services a licensee may seek to provide.

21. The regulatory burdens the FCC has retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The FCC will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The FCC seeks comment on significant alternatives commenters believe the FCC should adopt.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

III. Ordering Clauses

23. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332, notice is hereby given of the proposed regulatory changes described in this notice of proposed rulemaking and order, and that comment is sought on these proposals.

24. The petitions for reconsideration or clarification of the allocation report and order, ET Docket No. 98–95, filed by PanAmSat Corporation and Mark IV Industries Limited, I.V.H.S. Division are dismissed as moot.

25. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this notice of proposed rulemaking and order, including the Initial Regulatory Flexibility Analysis, to the Chief

Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–812 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–1996–1437]

RIN 2105–AD23

Privacy Act of 1974; Proposed Implementation

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to add a system of records to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. Public comment is invited.

DATES: Comments are due March 17, 2003.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket No. OST–1996–1437, Department of Transportation, SVC–124, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, from 9 a.m. to 5 p.m. ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Yvonne Coates, Office of the Chief Information Officer, Department of Transportation, Washington, DC (202) 366–6964.

SUPPLEMENTARY INFORMATION: *Additional exempt system.* It is DOT practice to identify a Privacy Act system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(k)) both in the system notice published in the **Federal Register** for public comment and in an Appendix to DOT's regulations implementing the Privacy Act (49 CFR Part 10, Appendix). This amendment proposes exemption from portions of the Privacy Act of a proposed Transportation Security Administration (TSA) system, whose establishment is currently the subject of public comment:

Aviation Security-Screening Records (ASSR) (DOT/TSA 010) would enable the TSA to maintain a security-screening system for air transportation. This system contains information regarding TSA's conduct of risk assessments required by 49 U.S.C. 114 and 44903. The system may be used, generally, to review, analyze, and assess threats to transportation security and respond accordingly.

Due to the national security and law enforcement aspects of the proposed system, DOT proposes to treat this system as it treats other law enforcement systems, by exempting it from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures); (d) (Access to Records); (e)(1) (Relevancy and Necessity of Information); (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), (1) to the extent that ASSR contains information properly classified in the interest of national security, in accordance with 5 U.S.C. 552a(k) (1) and (2) to the extent that ASSR contains investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2).

Analysis of Regulatory Impacts

This proposal is not a ''significant regulatory action'' within the meaning of Executive Order 12886. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Collection of Information

This proposal contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Application for collection authority is pending.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregated, $100 million or more in any one year the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

List of Subjects in 49 CFR Part 10

Privacy.

In consideration of the foregoing, DOT proposes to amend part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for part 10 would continue to read as follows:

Authority: Pub.L. 93–579; 49 U.S.C. 322.

2. Part II. A of the Appendix would be amended by adding new paragraph 21.

3. Part II. G of the Appendix would be amended by adding new paragraph 3.

The additions would read as follows:

Part II. Specific exemptions.

A. * * *

21. Aviation Security-Screening Records (ASSR), DOT/TSA 010.

* * * * *

G. * * *

3. Aviation Security-Screening Records (ASSR), DOT/TSA 010, maintained by the Transportation Security Administration.

* * * * *

Issued in Washington, DC, on January 9, 2003.

Eugene K. Taylor, Jr.,

Acting Chief Information Officer.

[FR Doc. 03–828 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking from Xportation Safety Concepts, Incorporated, requesting that NHTSA amend an air bag warning label requirement in the Federal motor vehicle safety standard for child restraints. The standard requires that each child restraint that can be used rear-facing bear a label directing caregivers not to place the child restraint on the front seat with an air bag, and provides other related warnings. The petitioner suggests that if a rear-facing child restraint is able to limit forces imposed on a test dummy by a deploying air bag, the child restraint should be excluded from the warning label requirement. The petitioner believes that its rear-facing child restraint is such a restraint.

NHTSA is denying the petition because the petitioner's suggested methodology for testing the capability of rear-facing child restraints to protect against air bag forces does not adequately assess the safety risks that air bags pose to children. Further, there is no other available test that assures that a child restraint will perform well with the myriad of air bag systems in current and future vehicles. The agency reaffirms the merits of urging parents to place infants in a rear-facing child restraint in a rear seating position because a child is safer there than in a front passenger seating position. This document also presents other reasons for denying the petition.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202–366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC., 20590.

SUPPLEMENTARY INFORMATION:

Background

To prevent or mitigate the effects of a crash, Federal Motor Vehicle Safety Standard No. 208 requires that vehicles be equipped with seat belts and, for front seat occupants, air bags that provide protection in frontal crashes. Lap/shoulder belts, when used properly, are highly effective in reducing the risk of fatal and moderate-to-critical injury. Frontal air bags are also highly effective in reducing fatalities. Between 1986 and July 1, 2002, air bags saved an estimated 9,325 front seat occupants (7,786 drivers: 2,180 belted and 5,606 unbelted; and 1,539 front-right passengers: 431 belted and 1,108 unbelted). The number of lives saved annually by air bags is continuing to increase as the percentage of air bag-equipped vehicles on the road increases.

However, while air bags are saving an increasing number of people each year in moderate and high speed crashes, some air bags, particularly those installed in vehicles manufactured prior to model year (MY) 1998, have also caused fatalities, especially to unrestrained, out-of-position children, in relatively low speed crashes. As of October 1, 2002, NHTSA's Special Crash Investigation (SCI) program has confirmed a total of 221 fatalities induced by the deployment of an air bag. Of that total, 137 were children, 74 were adult drivers, and 10 were adult passengers. The number of air bag-related fatalities generally increased from 1990 (1) to 1997 (53), and decreased from 1997 to 2001 (6 confirmed [1]) and 2002 (2 confirmed). The following table sets forth the number of confirmed air bag-related fatalities by crash year.

COUNTS FOR CONFIRMED* AIR BAG RELATED FATALITIES BY CRASH YEAR

[Through 10/01/02]

Fatals by Year	Children in rear-facing child safety seat (RFCSS)	Children not in RFCSS	Adult drivers	Adult passengers	Totals by year (confirmed)	Females 62″ or less (confirmed)
1990	0	0	1	0	1	1
1991	0	0	4	0	4	1
1992	0	0	3	0	3	2
1993	0	1	4	0	5	2
1994	0	5	8	0	13	1
1995	3	5	5	0	13	4
1996	6	19	7	2	34	2
1997	4	27	18	4	53	4
1998	5	27	13	2	47	6
1999	3	18	3	0	24	2
2000	0	8	6	2	16	3
2001	1	3	2	0	6	0
2002	0	2	0	0	2	0
2003	0	0	0	0	0	0
Total	22	115	74	10	221	28

*Confirmed cases are those where the air bag has been confirmed to be the injury mechanism.

Infants in rear-facing child restraints have been killed by air bags primarily because their riding position places them close to the air bag. A rear-facing infant seat that is installed in the front seat of a vehicle with a passenger air bag

[1] Confirmed means that the Special Crash Investigation has been completed.

will almost always position the infant's head very close to that air bag. Closeness is a problem because, in order for an air bag to cushion an occupant's head, neck, chest and abdomen and keep the occupant from hitting the steering wheel, windshield or instrument panel, the air bag must move into place quickly. The force of a deploying air bag is typically greatest close to the air bag module as the air bag begins to inflate. If occupants are very close to or in contact with the cover of an air bag, they can be hit with enough force to cause serious injury or death when the air bag begins to inflate. Twenty-two fatally-injured infants were close to the air bag because they were in rear-facing infant seats installed directly in front of a passenger air bag.

In recent years, significant changes have occurred that have reduced the number of persons killed by air bags. As a result of public education programs, improved labeling, and media coverage, the public is much more aware of the dangers air bags pose to children in the front seat and is taking steps to reduce those dangers. Children are riding in the back seat more regularly. In cars with passenger air bags, the percentage of toddlers and infants riding in the back seat increased from about 70 percent in 1995 to about 90 percent in 1999. Technological changes in the design of air bag systems have also reduced the risk posed by air bags. These changes include reducing the air bag outputs (*i.e.*, pressure rise rate and the peak pressure), relocating the air bag modules farther away from the driver and passenger, and changes to features of air bags. Additional technological changes will be made in the future. NHTSA has amended Standard No. 208 by adding a wide variety of new requirements, test procedures, and injury criteria to require that future air bags be designed to create less risk of serious injury than current air bags, particularly for small women and young children. 65 FR 30680, May 12, 2000; as amended 66 FR 65376, December 18, 2001.

Petition for Rulemaking

Today's document responds to a December 3, 2001 petition for rulemaking from a child restraint manufacturer that seeks to amend Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR 571.213), to implement changes that the petitioner believes would aid the sale of its restraints. The petitioner, Xportation Safety Concepts, Inc. (Xportation), believes it has developed an ''air bag resistant, rear-facing infant restraint.'' The petitioner further believes that it has identified a test procedure that can be used to demonstrate the compatibility of its infant restraints with an air bag. Xportation asks that the test procedure be added to Standard No. 213, and that child restraints shown, when tested in accordance with that test procedure, to be able to limit sufficiently the forces that are imposed on a test dummy restrained in the child restraint be excluded from the requirement to bear the air bag warning label specified in S5.5.2(k)(4) and Figure 10 of the standard. The label, which is required to be a permanent and prominent part of rear-facing restraints, is intended to provide greater assurance that caregivers are aware of the dangers posed by passenger air bags to children in rear-facing restraints.

Xportation's very brief petition did not discuss in any level of detail the suggested test procedure, the test devices, or the injury criteria. It did not provide any test data regarding its child restraint. Instead, Xportation stated that the standard should be amended because: (a) The agency indicated in a rulemaking document (59 FR 7643; February 16, 1994) that it would consider a test procedure then under development by the Society of Automotive Engineers (SAE) for testing child restraints with air bags for incorporation into Standard No. 213; and, (b) in the petitioner's view, since the SAE-developed test procedure was completed, the agency should now proceed to incorporate the work of SAE and others into the standard to facilitate the manufacture of ''air bag resistant infant restraints.'' Xportation did not discuss the merits of the work, but attached a bibliography to its petition and referred to documents referenced in the bibliography.

The following constitutes the bulk of the petition:

> The [SAE] task force completed the aforementioned guidelines, which were published by the Society of Automotive Engineers as a Surface Vehicle Information Report (Reference 1). Section 7 of the document discusses dynamic test procedures, and section 10 describes the test fixture. The seating portion of the fixture resembles that of the FMVSS 213 test fixture, and it is likely that its features could be incorporated into that fixture.
>
> At the request of the CRABI [2] Task Force, the SAE Infant Dummy Task Force developed specifications for the 6 Month Old and 12 Month Old CRABI Dummies, and they are now readily available (Reference 2). Further, a member of the CRABI Task Force has developed the appropriate injury assessment values for the 6 Month Old Dummy (Reference 3).
>
> NHTSA, in its early efforts to determine the interaction of child restraints and passenger air bags, conducted a number of impact simulations using a HYGE sled. The study was reported in Reference 4. In the report, it is noted that the test buck is similar to the buck design in the CRABI Task Force Information Report, and that it used the Standard 213 seat. The report further notes that the Standard 213 seat was modified to have the same seat cushion and seat back attitudes as the seat in the CRABI buck.
>
> We submit that there are now a test procedure, a test buck, dummies, and injury assessment values, all of the elements necessary to allow the agency to proceed with rulemaking to accommodate air bag resistant, rear-facing infant restraints. The rulemaking will, of course, include the incorporation of the CRABI dummies into 49 CFR part 572.[3]

Discussion

Previous Rulemaking

In 1994, before there were any injuries or fatalities to infants in rear-facing restraints caused by an air bag, NHTSA issued a final rule that required these restraints to have a warning label against using the restraint in any vehicle seating position equipped with an air bag (59 FR 7643). Public comments on the notice of proposed rulemaking (NPRM) preceding the rule expressed concerns that the rule would restrict child restraint design in the face of what was then only a theoretical risk posed to children. In response, the agency stated that it ''[did] not intend for this rule to impede the development of rear-facing restraints that are compatible with an air bag.'' The agency explained that it was monitoring the work of a task force on Child Restraint and Air Bag Interaction (CRABI) formed by the Society of Automotive Engineers (SAE), particularly the work on test procedures that could evaluate the performance of an infant restraint when used with a passenger air bag. NHTSA stated that if the CRABI task force were to develop a test procedure from its guidelines, NHTSA would evaluate it to determine whether the procedure is appropriate for Standard No. 213. ''Among other things,'' the agency stated, ''the procedure would have to be suitable for

[2] CRABI: Child Restraint Air Bag Interaction. (Footnote not in quoted text.)

[3] ''Reference 1'' in petitioner's bibliography was ''Guidelines For Evaluating Child Restraint System Interactions With Deploying Airbags.'' SAE J2189 (March 1993); Reference 2 was ''FTSS Product Catalog: CRABI 6 Month Older Infant Dummy 910420–000; 12 Month Old Child Dummy 921022–000;'' Reference 3 was ''Injury Assessment Values for the CRABI 6–Month Infant Dummy in a Rear-Facing Infant Restraint With Airbag Development. SAE 950872,'' J.W. Melvin, 1995; and Reference 4 was ''Child Restraint/Passenger Air Bag Interaction Analysis. Final Report, HS 808 004,'' L.K. Sullivan, 1992. (Footnote not in quoted text.)

testing all types of infant restraints, and be able to provide test results that assess the performance of the restraint in the real world.'' The agency also stated that it ''will consider a test procedure for incorporation into Standard 213 as soon as a suitable one is developed'' (59 FR 7646).

We do not agree with Xportation that the CRABI test procedure merits adoption into the Federal safety standard or that child restraints tested to the procedure need not be labeled with the air bag warning label that all rear-facing restraints must now bear. The agency's knowledge of air bags has changed tremendously since 1994, when NHTSA undertook the rulemaking that first required an air bag warning label. We undertook the air bag warning rulemaking after finding in NHTSA laboratory sled tests with top- and mid-mounted air bags that the air bags produced substantial increases in the values for the head injury criterion (HIC) and chest acceleration of dummies seated in rear-facing restraints, compared to the values for dummies in rear-facing restraints tested with no air bag. There had not yet been any deaths or injuries caused by an air bag at that time. At that time, the agency was guardedly optimistic about the possibility that a suitable test procedure could develop out of the CRABI task force work that would obviate the need for requiring all rear-facing restraints to have an air bag warning label.

Beginning in 1994, however, the risk posed by passenger air bags to infants in rear-facing restraints began to manifest itself in real-world deaths and injuries. Three air bag-related fatalities were children in rear-facing restraints in 1995, 6 in 1996, 4 in 1997, 5 in 1998, and 3 in 1999.[4] NHTSA developed various strategies to counter the rising number of fatally-injured children in rear-facing child restraints, including amending Standard No. 213 to make the warning label more direct in its warning and much more conspicuous (61 FR 60206; November 27, 1996). The agency, together with the automobile industry and child passenger advocates, also began a vigorous and successful consumer information campaign to get children seated in the back seat rather than in the front passenger seat.

We also became much more knowledgeable about air bags. In December 1997, to better understand air bag design and performance characteristics, NHTSA sent an information request to nine automobile manufacturers requesting detailed technical information on then-current industry practices on air bag technologies and how design and performance had evolved through the 1990s. The agency analyzed the responses and identified numerous trends in air bag design both on the driver side and the passenger side. The information showed that manufacturers have made many changes to air bag design. ''Air Bag Technology In Light Passenger Vehicles,'' Hinch *et al.*, October 26, 1999 (*see* Docket 2814–47).

This information has led us to evaluate the CRABI procedure in a better informed, more critical light. While at one point we were somewhat optimistic about the CRABI procedure, we now do not believe that it or any other procedure adequately assesses the safety risks to rear-facing children from an air bag.

Review of the SAE procedure

The CRABI procedure is set forth in the SAE's Surface Vehicle Information Report SAE J2189, ''Guidelines for Evaluating Child Restraint System Interactions With Deploying Airbags,'' March 1993. As noted by the SAE in that document, there are many uncertainties associated with the procedure. The SAE explained that the document is styled an ''information report,'' as opposed to a ''recommended practice,'' ''because of the general inexperience in testing the interaction between child restraint systems and deploying air bags and the lack of real-world accident data.'' The explanation continues:

> This document describes dummies, procedures, and configurations that can be used for investigating the interactions that occur between a deploying airbag and a CRS [child restraint system]. Static tests may be used to sort CRS/airbag interaction on a comparative basis in either an actual or a simulated vehicle environment. Systems that appear to warrant further testing may be subjected to an appropriate dynamic test at a speed near that needed to deploy an airbag or at a higher speed commonly used to evaluate CRS performance. No test matrix is specified at this time for evaluating either a CRS or an airbag during interaction with each other. Instead, engineering judgment based on prior experience with CRS and/or airbag testing should be used in selecting the tests to be conducted with each individual system. Such tests may be aimed not only at producing interactions with the most severe results but also at identifying those conditions that produce the least interaction and/or satisfactory CRS performance results. Baseline tests to indicate the performance of a CRS in the absence of airbag deployment are also recommended for comparison purposes.

The CRABI test procedure could be an acceptable *starting point* in evaluating the performance of particular child restraints with specific air bag systems. However, NHTSA believes that the procedure alone would not be able to provide test results that sufficiently assess the performance of a restraint in the real world. J2189 does not specify a test matrix, but relies on the tester's engineering judgment as to the test configurations and conditions that should be used. Xportation provides no explanation or discussion as to which configurations and conditions it believes need or need not be specified that would assure the safe performance of a child restraint with the air bags in existing and future model year vehicles.

Perhaps the reason that Xportation did not do so is because it is virtually impossible to do so. J2189 is predicated on the tester's being able to tune the air bag system to simulate a specific air bag system. If J2189 were incorporated into Standard No. 213, a very limited type of air bag system would be simulated by the standard. Yet, NHTSA's survey data (Hinch *et al., supra*) show great variation in air bag system characteristics and performance. Moreover, air bag systems have changed significantly in recent years. Some of the changes reduced the aggressivity of air bags, such as by reducing air bag outputs in the most recent model year vehicles compared to the earlier generation vehicles. Some of the changes involved changes in inflator characteristics, new air bag shapes, sizes, fabrics, venting systems and venting levels, occupant size and location sensors, seat position sensors, belt use sensors, and crash severity sensors, as well as computation algorithms that use the information in making air bag deployment decisions. Manufacturers also seem to be on the threshold of making a significant leap in introduction of sophisticated technologies to improve air bag performance. In short, a test procedure that only replicates one or a few types of air bag systems does not assure that a child restraint that meets performance criteria tested to that procedure will perform adequately with the myriad of air bag designs currently on the road and those that will be installed in future vehicles.

The safety risk posed to infants in rear-facing child restraints by deploying air bags is so great that a test procedure used to assess the performance of the child restraint must carefully evaluate that risk. For example, if an ''air bag-resistant'' child restraint fails to work, an infant in that restraint is almost certain to be injured when the air bag deploys. Xportation has not provided data showing that a child would not be injured by a type of air bag system that

[4] There were 0 in 2000 and 1 in 2001.

was not simulated by the J2189 procedure, or that the child would be protected if the restraint were misused.[5] Nor did Xportation provide data showing that the test dummies could satisfactorily evaluate the harm resulting from a deploying air bag. In the absence of such data, we conclude that the suggested amendment would subject rear-facing infants to too high a risk of injury from an air bag.

As a practical matter, NHTSA cannot test products in every configuration or circumstance they could be used. However, this limitation is generally acceptable since test procedures simulating a relatively narrow set of real world circumstances generally have a positive impact on individuals in a broader range of circumstances. However, in this particular case, testing to a test procedure of one sort could have severe consequences to a child in a broad range of circumstances. Thus, we deem the requirements and test procedures to be too narrow and not adequately representative of types of air bag systems not simulated by the J2189 procedure.

The agency will not attempt to develop a suitable test procedure in response to the petition. Developing a suitable test procedure (assuming that it would be practicable to do so) would use agency resources that are better spent on areas that would result in definite safety benefits. Moreover, for the reasons stated above, we believe that no procedure could adequately assure the overall safety of children. There is a risk of injury associated with the forces imposed by the air bag on a rear-facing infant.[6] There are no such risks when the child is in the back seat. Even in vehicles without air bags, infants, as well as other occupants, are 26 percent safer against fatality when seated in the rear seat than in the front seat. Thus, even if air bag risks could be completely controlled, overall safety would be diminished if some infants were restrained in the front seat instead of in the rear seat, which would occur if petitioner's suggested amendment was adopted. Keeping infants restrained in the rear seat instead of in the front seat assures that a more injurious event would not be substituted for a less injurious one.[7]

Xportation has argued that placing children in the back increases the risk for crashes because of the possibility of distraction due to parents' having to turn to attend to them. Based on a review of 2000 Fatal Analysis Reporting System (FARS) data[8], a total of 3,946 drivers (or 6.9 percent of all drivers involved in fatal crashes) were determined to be inattentive. However, the 2000 FARS database does not distinguish between various causes of inattentiveness, such as talking, eating, cell phone use, or attending to a child in either the front or rear seat. As such, the agency is unable to definitively ascertain from this data whether children are more or less of a distraction in the front seat as compared to the rear seat. However, placing children in rear seats does significantly increase the chances that the child will survive a crash should one occur as noted in the preceding paragraph.

In conclusion, NHTSA has evaluated the test procedure suggested by the petitioner for incorporation into the Federal standard. We conclude that the procedure does not go far enough in assessing the injury risk posed by air bags to infants in rear-facing restraints. Further, we affirm the continuing merit of urging parents to place infants in rear-facing restraints in a rear seating position, since the infants are safer there than in a front passenger seating position. This message saves lives.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition is denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on January 9, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–821 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–59–P

[5] The SAE explains in J2189 that the information report ''addresses only the effects of the interactions between deploying airbags and child restraint systems that would have been considered properly installed and used in the right and center front passenger positions before the advent of passenger airbags and may be properly installed there in the future. Child restraint misuse is not otherwise addressed in this document.''

[6] Limits on the force levels imposed on the dummy indicate an injury risk assessment above which the risk of injury is unacceptably high. The risk of injury of force levels below the threshold, while lower, still exists.

[7] For vehicles with either (a) no rear seats, or (b) rear seats that are too small to accommodate rear-facing child restraints in accordance with the provision of S4.5.4.1(b) of FMVSS No. 208, vehicle manufacturers may install a device (an on/off switch) that deactivates the air bag at the front passenger position. In addition, under appropriate circumstances, owners of all vehicles may obtain an on/off switch (see 49 CFR part 595).

[8] ''Traffic Safety Facts 2000: A Compilation of Motor Vehicle Crash Data From the Fatal Analysis Reporting System and the General Estimates System,'' National Highway Traffic Safety Administration, National Center for Statistic and Analysis, December 2001.

Notices

Federal Register

Vol. 68, No. 10

Wednesday, January 15, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

TE–43 GIWW Bankline Restoration Project; Terrebonne Parish, Louisiana

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the GIWW Bankline Restoration Project, Terrebonne Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project will protect critically eroding portions of the southern bank of the GIWW that acts as an interface between the fragile fresh marshes and the flowing, turbulent water of the GIWW. The proposed project consists of 37,000 feet of bankline restoration and protection along the foreshore of the southern bank of the GIWW.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 03–797 Filed 1–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Porter Bayou Watershed, Bolivar and Sunflower Counties, Mississippi

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Porter Bayou Watershed, Bolivar and Sunflower Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federal assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a watershed plan to provide flood protection and watershed protection. Alternatives under consideration include conservation land treatment using best management practices and channel work.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agency individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from Homer L. Wilkes at the above address or telephone number.

''(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)''

Dated: December 20, 2002.

Homer L. Wilkes,

State Conservationist.

[FR Doc. 03–796 Filed 1–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–703]

Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 10 , 2002, the Department of Commerce (the Department) published the preliminary results of its thirteenth administrative review of the antidumping duty order on Granular Polytetrafluoroethylene (PTFE) Resin from Italy. The review covers one producer/exporter of the subject merchandise, Ausimont SpA, and its U.S. affiliate, Ausimont USA (Ausimont). The period of review (POR)

is August 1, 2000, through July 31, 2001. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section.

EFFECTIVE DATE: January 15, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Keith Nickerson, at (202) 482–1756 or (202) 482–3813, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2002, the Department published in the **Federal Register** the preliminary results of the thirteenth administrative review of the antidumping duty order on PTFE resin from Italy. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy*, 67 FR 57376 (September 10, 2002) (*Preliminary Results*). On September 17, 2002, we received from Ausimont its response to sections B and D of the supplemental questionnaire.

We invited parties to comment on the *Preliminary Results*. On October 10, 2002, we received case briefs from both the petitioner, E.I. Dupont de Nemours & Company (Dupont) and Ausimont. On October 17, 2002, we received rebuttal briefs from both Dupont and Ausimont. The Department rejected, and requested resubmission of, DuPont's rebuttal brief on October 28, 2002, because that brief advanced a new argument not present in the petitioner's case brief and not responsive to arguments in the respondent's case brief. The petitioner resubmitted its rebuttal brief on November 1, 2002. Additionally, on October 31, 2002, the Department issued a second supplemental questionnaire to Ausimont. Ausimont submitted its response to this questionnaire on November 14, 2002, and the petitioner submitted comments on Ausimont's response on November 25, 2002.

A public hearing was held on December 9, 2002, at which the parties discussed the issues contained in the case and rebuttal briefs, as well as Ausimont's second supplemental questionnaire response and the petitioner's November 25, 2002, comments.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Final Affirmative Determination; Granular Polytetrafluoroethylene Resin from Italy*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and U.S. Customs purposes only. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in the case briefs, and post-briefing submissions, by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 8, 2003, which is hereby adopted by this notice. Attached to this notice, as an appendix, is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this memorandum, which is on file in the Central Records Unit (CRU), Room B-099 of the main Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at ia.ita.doc.gov. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we made the following adjustments to the calculation methodology in determining the final dumping margins in the proceeding:

- We were unable to calculate the margin for a substantial quantity of unreported further manufactured sales and, therefore, we applied adverse facts available to the quantity of unreported sales. *See* Comment 1 of the *Decision Memorandum*.
- In calculating both the costs of production for the cost test and the constructed export price (CEP) profit ratio, we used a general and administrative (G&A) expenses rate based on adverse facts available. *See* Comment 2 of the *Decision Memorandum*.
- We treated home market ''off spec'' sales, which were reported after the preliminary results, as non-prime merchandise, and did not compare them to U.S. sales of prime merchandise. *See* Comment 4 of the *Decision Memorandum*.
- For home market sales with missing inland freight expenses, as facts available, we applied the freight expense from the most similar sale in terms of customer, product, quantity and destination. *See Final Results Calculation Memorandum* to Constance Handley from Vicki Schepker and Keith Nickerson, dated January 8, 2003, (*Calculation Memorandum*) also on file in the CRU.
- We used Ausimont's POR costs, reported after the preliminary results, in the final results calculation. *See Calculation Memorandum*.
- For further manufactured sales, we used the revised further manufacturing costs provided in Ausimont's November 14, 2002, supplemental questionnaire response. *See* Comment 6 of the *Decision Memorandum*.
- We made adjustments to packing, variable and total cost, and indirect selling expense variables, where appropriate, to reflect proper currencies and units of measure. *See Calculation Memorandum*.

These adjustments are discussed in the *Decision Memorandum* and in the *Calculation Memorandum*.

Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition, a final determination in an investigation, any previous administrative review, or any other

information placed on the record. In this case, the Department has applied partial facts available for a quantity of unreported sales and the general and administrative expense ratio. (*See* the *Decision Memorandum* at comments 1 and 2).

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of August 1, 2000, through July 31, 2001:

Exporter/Manufacturer	Weighted-Average Margin Percentage
Ausimont SpA	12.08

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above de minimis we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) for the exporter/manufacturer covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the ''All Others'' rate established in the less-than-fair-value investigation (53 FR 26096, July 11, 1988). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 8, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

1. Unreported further manufactured sales
2. Calculation of the CEP profit ratio
3. Application of the special rule
4. Treatment of sales of off-spec merchandise
5. Treatment of negative margins
6. Packing expenses for further manufactured sales
7. Issuance of draft final results
8. Factory overhead and G&A expenses for further manufactured sales

[FR Doc. 03–883 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the Project Officer indicated below.

U.S. Automotive Parts and Components Business Development Mission to Russia

Moscow, Samara and Togliatti, April 6–12, 2003, Recruitment closes on February 14, 2003.

For further information contact: Ms. Phyllis Bradley, U.S. Department of Commerce, telephone 202–482–2085, or e-mail to *Phyllis.Bradley@mail.doc.gov*—or, in Russia, Mr. Geoffrey Cleasby, U.S. Embassy, Moscow, telephone 7–095–737–5030, fax 7–095–737–5033, or e-mail to *Geoffrey.Cleasby@mail.doc.gov*

Aerospace Executive Service at Latin America Defentech—Fourth International Exhibition & Conference on Defense Technology

Rio de Janeiro, Brazil, April 22–24, 2003, Recruitment closes on March 10, 2003.

For further information contact: Mr. Jason Sproule, U.S. Department of Commerce, telephone 949–660–1688, ext. 151, or e-mail to *Jason.Sproule@mail.doc.gov*

Assistant Secretarial Business Development Mission to Morocco and Egypt

Casablanca, Rabat and Cairo, May 25–June 2, 2003, Recruitment closes on March 12, 2003.

For further information contact: Ms. Caroline McCall, U.S. Department of Commerce, telephone 202–482–2499, or e-mail to *Trade.Missions@mail.doc.gov*

Aerospace Executive Service Program at the Paris Air Show

Paris, France, June 16–18, 2003, Recruitment closes on April 18, 2003.

For further information contact: Ms. Danielle Dooley, U.S. Department of Commerce, telephone 303–844–6623, ext. 14, or e-mail to *Danielle.Dooley@mail.doc.gov*

Medical Device Trade Mission to Panama, Guatemala and Honduras

Panama City, Guatemala City and Tegucigalpa, July 13–19, 2003, Recruitment closes on May 16, 2003.

For further information contact: Mr. Steven Harper, U.S. Department of Commerce, telephone 202–482–2991, or e-mail to *Steven_Harper@ita.doc.gov*

Recruitment and selection of private sector participants for these trade

missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

For further information contact: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov*

Dated: January 9, 2003.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 03–865 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of jointly owned invention available for licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and JMAR Research, Inc. The Department of Commerce's ownership in this invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov,* or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is: [Docket No.: 99–027US]

Title: Parallel X-ray Nanotomography.

Abstract: An apparatus for nanotomography uses an x-ray source comprising a laser generated plasma. X-rays generated in the x-ray source are collected and focused using a collector optic onto a sample. The collector optic is preferably comprised of Wolter optics combining reflection off an ellipsoid with a reflection off a hyperboloid. X-rays emitted from the sample are focused with an objective lens assembly. The objective lens assembly includes an array of fresnel zone plates. An image formation and acquisition apparatus form an image based on the received X-rays. The array of fresnel zone places is an important feature of the invention, as the array dramatically improves the intensity of the x-rays reaching the detector over a conventional objective lens. A laser-based x-ray source is also key to the invention, generating an x-ray beam of sufficient intensity to provide sufficient counting statistics for a tomographic reconstruction to be obtained.

Dated: January 8, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–774 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, January 30, 2003, from 8 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program with over 60 centers across the country serving America's 360,000 small manufacturers. The centers are true federal state partnerships using federal, state and local funds to provide services. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP and for the Board to discuss future strategic direction of the program and its current plans. The agenda will include a briefing on the state and health of the system under the current state of the budget while under a continuing resolution, a report on the National Brand Meeting in December 2002 and the status across the system and a new direction at MEP to set up a Research team to delve into the area of the importance of manufacturing in the U.S. economy. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Monday, January 27, and she will provide you with instructions for admittance. Mrs. Peter's email address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene January 30, 2003 at 8 a.m. and will adjourn at 3:30 p.m. on January 30, 2003.

ADDRESSES: The meeting will be held in the Employee's Lounge, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–5033.

Dated: January 8, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–775 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Doc. No. 030109006–3006–01, I.D. 010903B]

Taking and Importing of Marine Mammals; Decision Regarding the Impact of Purse Seine Fishing on Depleted Dolphin Stocks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: This Notice announces that on December 31, 2002, the Assistant Administrator for the National Marine Fisheries Service, on behalf of the

Secretary of Commerce, determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the Eastern Tropical Pacific Ocean (ETP). This finding determines the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States.

DATES: This finding became effective December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Silver Spring, Maryland, 20910. 301–713–2322, ext. 156.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act, require the Secretary of Commerce to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program, and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a ''significant adverse impact'' on any depleted dolphin stock in the ETP.

On December 31, 2002, the Assistant Administrator for the National Marine Fisheries Service, on behalf of the Secretary of Commerce, determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. A copy of the finding and the rationale supporting the finding are set forth below. Copies of supporting documentation referenced in the rationale may be found on the Internet at *http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/tunadolphin.html.*

This finding determines the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. As a result of this finding, the dolphin-safe labeling standard shall be that prescribed by section (h)(1) of the DPCIA. Therefore, dolphins can be encircled or chased, but no dolphins can be killed or seriously injured in the set in which the tuna was harvested.

DATES: This finding was effective December 31, 2002.

Dated: January 9, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

Final Finding Required by the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385(g)(2).

The Dolphin Protection Consumer Information Act (DPCIA) requires the Secretary of Commerce (Secretary) to make a final finding by December 31, 2002 on whether the intentional deployment on or the encirclement of dolphin with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the Eastern Tropical Pacific (ETP) region. 16 U.S.C. 1385(g)(2) The authority to make the finding has been delegated to the NOAA Assistant Administrator for Fisheries. Based on the information reviewed, I hereby find the intentional deployment on or encirclement of dolphin with purse seine nets in not having a significant adverse effect on any depleted dolphin stock in the ETP.

Summary

Since the late 1950's, the predominant tuna fishing method in the ETP has been to encircle schools of dolphins with a purse seine fishing net to capture the tuna concentrated below. Hundreds of thousands of dolphins died as a result of this practice in the early years of this fishery. Marine Mammal Protection Act (MMPA) provisions, improved fishing techniques, and international cooperation have resulted in greatly reduced dolphin mortality.

In 1997, the MMPA and the DPCIA were amended by the International Dolphin Conservation Program Act (IDCPA), to require the Secretary to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a ''significant adverse impact'' on any depleted dolphin stock in the ETP. This finding changes the dolphin-safe labeling standard as it applies to tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. The finding must be made by December 31, 2002, and the research findings must be submitted to Congress within 90 days.

To arrive at a finding, NOAA Fisheries, in consultation with the Marine Mammal Commission (MMC) and the Inter-American Tropical Tuna Commission (IATTC), conducted ''a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the ETP.'' Based on the research results and the other best available information, I have concluded that the intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. This finding means that the dolphin-safe labeling standard shall be that prescribed by section (h)(1) of the DPCIA. Therefore, dolphin-safe means that dolphins can be encircled or chased, but no dolphins can be killed or seriously injured in the set in which the tuna was harvested. This finding will become effective immediately.

A **Federal Register** Notice will be published containing more information on this finding. The Final Science Report will be submitted to Congress within 90 days.

December 31, 2002.

William T. Hogarth, Ph.D.,

Assistant Administrator for Fisheries.

Organized Decision Process (ODP) Development and Analysis

Background

The Marine Mammal Protection Act (MMPA) and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act (IDCPA), require the Secretary of Commerce to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, as to whether or not the intentional deployment on or encirclement of dolphins with purse seine nets is having a ''significant adverse impact'' on any depleted dolphin stock in the eastern tropical Pacific Ocean (ETP). The Secretary's finding serves as the basis for determining the definition of ''dolphin-safe'' as applicable to tuna harvested by purse seine vessels with carrying capacities of greater than 400 short tons operating in the ETP. Further, the DPCIA required the Secretary to make an initial finding in 1999, and a final finding no later than December 31, 2002.

On April 29, 1999, the National Marine Fisheries Service (NOAA Fisheries), on behalf of the Secretary, made an initial finding that there was insufficient evidence at that time to determine whether the deployment on and encirclement of dolphins by the

tuna purse seine fishery was having a significant adverse impact on any depleted dolphin stock in the ETP (64 FR 24590). Also in 1999, NOAA Fisheries submitted a Report to Congress containing the preliminary research findings to support that initial finding. That Report also described a decision analysis framework to evaluate quantitatively the various types of information gathered in the required studies in order to make the initial finding. The U.S. District Court for the Northern District of California, in *Brower* v. *Daley,* 93 F. Supp. 2d 1071 (N. D. Ca. 2000), set aside the 1999 determination, and that ruling was affirmed by the Ninth Circuit Court of Appeals in *Brower* v. *Evans,* 257 F. 3d 1058 (9th Cir. 2001).

The final research results provide substantially more information to support the final finding than was available for the initial finding in 1999. Some of this new information includes: updated dolphin abundance data, updated mortality estimates based on observer data, an updated review of scientific literature on stress in marine mammals, results from a necropsy study of dolphins killed in the fishery, a review of historical demographic and biological data related to dolphins involved in the fishery, results from the chase-recapture experiment, as well as information regarding variability in the biological and physical parameters of the ETP ecosystem over time. In making the final finding, all research required by the IDCPA was completed and considered.

To accommodate this newly available scientific information and ensure transparency in the development of its decision, NOAA Fisheries revised its decision-making process for the final finding. On February 15, 2002, NOAA Fisheries published a proposed Organized Decision Process (ODP) in the **Federal Register**. The ODP was designed to establish a framework for making the final finding. Comments were received on this proposal from the Inter-American Tropical Tuna Commission (IATTC), the Marine Mammal Commission (MMC), environmental organizations, the U.S. and the foreign tuna industries, members of the public, the U.S. Departments of State and Justice, two members of the U.S. Congress, and several foreign nations, among others. After careful consideration of these comments, NOAA Fisheries made revisions, as appropriate, and, on August 23, 2002, adopted a final ODP

The ODP differs from the previous decision framework primarily in that it takes into account different levels of uncertainty inherent in research of this nature. The ODP allows the Secretary to consider many different types of the information in light of the uncertainty and appropriately weigh the information based on the level of confidence that exists for the information. The ODP is also distinct from NOAA Fisheries' earlier decision framework in that it includes a mechanism for weighing information based on high standards for determining what is the best information available. As prescribed by the ODP, the weight given to the available scientific information will be determined by the degree to which it meets the following elements: (1) Relevance, (2) timeliness, (3) passed independent peer-review, and (4) available to NOAA Fisheries for verification.

The ODP defined the terms included in the weighting criteria. ''Relevance'' was defined to mean the scientific information is pertinent to the use of the information. ''Timeliness'' was defined to mean the relevancy of scientific information least degraded by the passage of time. ''Passed independent peer review'' was defined to mean the scientific information has been published in a refereed scientific journal in its field or independently read and criticized in writing by at least two peers; the criticism was disposed of either by acceptance or rebuttal, as appropriate by the author(s); and the disposition of the criticism by the author(s) was independently determined to be appropriate and adequate. Verification was defined to mean that the data, procedures, methods, equipment, mathematics, statistics, models, computer software, and anything else used to produce the scientific information are to be submitted to NMFS in a timely manner such that the scientific information may be replicated or rejected. For the final finding, ''in a timely manner'' was stated in the ODP as being material received as of May 1, 2002.

The NOAA Fisheries' ODP considers separate measures of fishery and environmental effects on dolphins, consisting of a series of questions for consideration in reaching the final finding. They are as follows: (1) The Ecosystem Question; (2) the Direct Mortality Question; (3) the Indirect Effects Question; and (4) the Growth Rate Question. For the Direct Mortality and the Growth Rate Questions, there are basic thresholds in the ODP that result in a ''yes'' or ''no'' answer. If the answer to the Direct Mortality Question is ''yes'', then the Secretary will conclude that the fishery is having a significant adverse impact. Similarly, if the answer to the Growth Rate Question is ''no'', then the Secretary will conclude that the fishery is having a significant adverse impact. Conversely, a ''no'' and a ''yes'' answer, respectively, would result in a finding of no significant adverse impact. For the Ecosystem and the Indirect Effects Questions, the Secretary will review the available information as well as the evidence presented by members of two expert panels in reaching final conclusions. The questions found in the ODP, along with the information used to reach the appropriate answers and rationale for each, are found below.

Research Conducted Pursuant to Section 304(a) of the MMPA

Pursuant to section 304(a) of the MMPA, NOAA Fisheries completed four years of specified research to support the Secretary's finding regarding the impact of the tuna purse seine fishery on depleted dolphin stocks in the ETP, in consultation with the MMC and the IATTC. The research program was broadly structured to include four components: abundance estimation, ecosystem studies, stress and other fishery effect studies, and stock assessment. The results of the required research were subjected to rigorous, independent peer reviews to ensure that the Secretary is provided with information of the highest caliber in making the final finding. NOAA Fisheries will submit these results in its Final Science Report to Congress within 90 days of the finding. A brief summary of each of the major categories of research follows.

Abundance Estimation. Knowledge of dolphin population levels is key to understanding the overall status of these stocks. Current dolphin abundance estimates were derived from research vessel surveys conducted in the ETP during 1998, 1999, and 2000, using improved analytical methods for abundance estimation. Survey data from nine earlier abundance surveys dating back to 1979 were also re-analyzed using these new methods. This time series of abundance estimates provides the core information for evaluations of trends, population growth rates, and ultimately stock assessment analyses for the three depleted dolphin stocks.

Ecosystem Studies. For a long-lived animal such as a dolphin, carrying capacity is more likely to be affected by long-term (over decades) changes rather than those occurring short-term (inter-annual or seasonal). NOAA Fisheries' ecosystem studies focused on investigations of temporal variation in as many parts of the ETP ecosystem as possible. These included physical and

biological oceanography, a range of trophic levels from the lowest (phytoplankton) to the highest (top predators), and as many species within each trophic level as possible.

Stress and Other Indirect Fishery Effects. Stress studies are also mandated by the MMPA amendments to address the concern that chase and encirclement during fishing operations might affect dolphins in ways that might not necessarily result in their immediate and observable death in the nets, but that could impede recovery. These are often called ''cryptic'' effects. Four related research projects generally termed ''stress studies'' were specifically required by U.S. law to study the effect of intentional encirclement on dolphins and dolphin stocks: a stress literature review, a necropsy study, a review of historical data, and a field study involving the repeated chasing and capturing of dolphins. The key lines of investigation included research on potential separation of dolphin cows and calves, measurement of acute and chronic physiological effects that could result in injury or death, observation of behavioral responses to fishing activities, and estimation of the average number of times a dolphin might be chased and encircled per-year per-stock.

Stock Assessments. The final component of the research, the stock assessment modeling, provides quantitative estimates of dolphin population growth rates and depletion levels, as well as a framework for testing hypotheses about the effects on dolphins of changes in carrying capacity and potential fishery effects. Of primary interest was an evaluation of the current population size relative to the population size that can be sustained by the ecosystem in the absence of human-induced mortality. This has a direct bearing on the potential rate of recovery for these depleted stocks and provides a means of evaluating the observed population growth rate in the context of the ecosystem and uncertainties associated with the estimates of abundance and mortality. Unfortunately, this question cannot be addressed for coastal spotted dolphins because historical estimates of mortality and abundance are not available for this stock.

Information Obtained Under the IDCP and Other Relevant Information

Pursuant to the MMPA, the Secretary is also required to consider ''information obtained under the IDCP'' and ''other relevant information'' when making the final finding. To this end, NOAA Fisheries worked with the IATTC to obtain various types of information relevant to this decision. This information included data on the number of dolphin sets made by the fishery and dolphin mortality reported by the IATTC observer program, among other things.

NOAA Fisheries also invited interested members of the public to submit such information for consideration. In order to properly assess and evaluate this outside information with sufficient time for making the finding by the date required in the statute (December 31, 2002), the deadline for submission of information was May 1, 2002. For the purposes of weighing outside information, NOAA Fisheries determined that information submitted by the deadline was submitted in a timely manner and is given greater weight than information that was submitted after this deadline. There was only one submission of outside scientific information by May 1, 2002. This consisted of a review by the IATTC of three previously published NOAA Fisheries papers on the subject of dolphin stress and other indirect effects of the tuna purse seine fishery on dolphins. NOAA Fisheries considers the review relevant, since it was received in a timely manner and was able to be evaluated and verified. The document is currently under review with a scientific journal, but otherwise has not been independently peer reviewed.

NOAA Fisheries submitted its Final Science Report to the IATTC and the MMC for their review as a mechanism by which to provide the Secretary with the best information in making the final finding. NOAA Fisheries received general comments from the MMC. The IATTC submitted comments pertaining to the NOAA Fisheries Science Report, as well as additional information and analyses. NOAA Fisheries considers this information relevant, although it was not able to thoroughly evaluate and verify the information. NOAA Fisheries did, however, prepare a cursory assessment of the IATTC's comments for consideration. In summary, the IATTC's comments include in-depth analyses of relevant information and specific comments pertaining to the analysis and interpretation of information by NOAA Fisheries. The IATTC's response also concludes that the fishery is not having a significant adverse impact on depleted dolphin stocks in the ETP. The MMC's comments concluded that there is insufficient evidence to determine that the fishery is not having a significant impact on depleted stocks and that there is only inconclusive evidence that the intentional chase and encirclement of dolphins by the fishery is having adverse impacts on the recovery of dolphin stocks. While this information is relevant and was considered in making the finding, it cannot be weighed as heavily as the information contained in NOAA Fisheries' Final Science Report.

Expert Panels

NOAA Fisheries appointed two panels of independent scientific experts to provide individual opinions regarding the answers to the Ecosystem and the Indirect Effects questions as a means of assisting in answering the two questions in the ODP for which there are the most complex and/or uncertain data (67 FR 31279). The panelists were nominated by the public, with the help of several scientific and professional societies, and were chosen by a committee of individuals which included representatives from NOAA Fisheries, the IATTC, the MMC, and an independent scientific body. The individual experts based their opinions on a review of the results from the required research program, information obtained under the IDCP, and other relevant information, along with the expert knowledge that these individuals possess as leaders in their respective fields.

Analysis

The Ecosystem Question. During the period of the fishery, has the carrying capacity of the ETP for dolphins declined substantially or has the ecological structure of the ETP changed substantially in any way that could impede depleted dolphin stocks from growing at rates expected in a static ecosystem? Or has the carrying capacity increased substantially or has the ecological structure changed in any way that could promote depleted dolphin stocks to grow at rates faster than expected in a static ecosystem?

Changes in an ecosystem can fundamentally affect the carrying capacity of a species that inhabits that ecosystem. Changes that adversely affect the habitat of a species, including its prey, likely will result in a decrease in the carrying capacity of that species. For depleted species, such adverse changes also will likely slow the rate at which these species recover.

Because substantial changes in an ecosystem can affect a depleted population or stock's recovery, the ODP considers scientific evidence of whether a significant ecosystem change has occurred in the ETP and if so, how that change may be impacting depleted dolphin stocks. In considering the possible effects of ecosystem changes, NOAA Fisheries collected or reviewed

physical and biological oceanography data, including information on a range of trophic levels from the lowest (phytoplankton) to the highest (top predators), and as many species within each trophic level as possible. NOAA Fisheries also solicited the opinions from members of a separate Ecosystems Panel, comprised of independent scientific experts in biological oceanography and ecology.

Available scientific information reveals the existence of periodic, low frequency changes within the ETP. These longer, decadal-changes are evident from sea surface temperature data beginning in 1901. Notably, a shift occurred in the late 1970s that was detected throughout the Pacific Ocean. Changes at that time in the physical environment and in biological communities were clearly documented in the North Pacific Ocean. In the ETP, this shift resulted in a warming of less than 1°C. Coincident with increase in temperature in the ETP, there was a weakening of trade winds and a small change in surface chlorophyll. No other responses to this late 1970s shift have been reported, but biological data prior to 1976 are sparse or currently unavailable in a form that would allow comparisons with more recent data.

In addition to periodic, low-frequency ecosystem changes, the ETP ecosystem is periodically affected by the El Nino/Southern Oscillation (ENSO), which occurs on two to seven year periods. All investigations by NOAA Fisheries indicated that variability associated with ENSO events is the predominant variability throughout the ecosystem, having a much greater effect than periodic decadal-scale changes. These ecosystem changes are in part supported by analyses of data on prey fishes, squids, and seabirds collected by NOAA Fisheries during dolphin surveys since 1986. The broader significance of these changes, however, is limited given the absence of comparable data prior to the early 1980s.

NOAA Fisheries' research indicates that dramatic reductions in carrying capacity caused by ecosystem changes is considered unlikely. If an ecosystem change dramatic enough to impact dolphin stocks had occurred, it is unlikely that the only animals affected would be dolphins. Data on a wide range of habitat variables and species were collected, beginning in 1986, as part of the NOAA Fisheries dolphin assessment cruises. No dramatic shifts were detected. However, NOAA's ability to determine existence and magnitude of ecosystem changes in the ETP, together with the effect of those changes upon depleted stocks, is significantly limited by a paucity of relevant scientific information. Questions remain as to the actual carrying capacity of depleted stocks under even optimal conditions. Additionally, there are few data available concerning the ETP ecosystem prior to the late 1970s, hindering the ability to examine low frequency ecosystem changes and their effect on depleted marine mammal stocks. Assessments are further limited by the possibility that even small changes in background physical conditions can have large effects upon species within that ecosystem.

The potential effect of ecosystem changes was addressed by the five members of the Ecosystem Panel, each of whom had significantly different expertise to bring to bear on their individual opinions. The Ecosystem Expert Panel members' assessments were based on their review of the NOAA Fisheries Final Science Report, and relevant oceanographic and ecosystem data from the period of the fishery.

All experts agreed that historical surface temperature data indicate that since the mid 1970s, the Pacific Ocean has been in a warm phase of the Pacific Decadal Oscillation (PDO). Within the ETP, this PDO cycle has resulted in a surface temperature increase of 2 degrees centigrade above temperatures documented during a cold phase which occurred in the 1950s and 1960s. (Report of Michael Landry). While increased temperatures may result in some positive effects, most experts agreed that temperature increases would result in a deeper thermocline, which in turn would reduce the availability of prey species for depleted marine mammals.

In addition to ecological changes brought on by PDO, experts also noted environmental changes attributable to ENSO. Like PDO, changes associated with ENSO result in increased surface water temperatures. Evidence indicates that prey fish are substantially depressed during ENSO. (Reports of Read, Landry, and Stewart).

According to these experts, the extent to which these PDO and ENSO warming cycles have affected depleted marine mammal stocks is unknown, but potentially significant. One expert concluded that it is unlikely that the ecological structure of the ETP has changed substantially in a way that could significantly impede or promote the population growth of depleted stocks. (Report of Andrew Read). Others, expressed a different view. In Landry's view, ''such changes provide a credible explanation for at least part of the observed slow recovery of dolphin stocks * * *.'' In the view of Stewart, ''the argument is persuasive that the carrying capacity of the ETP, relative to the ecologies and life histories of northern offshore spotted dolphins and eastern spinner dolphins, is lower now (and the past several or more years), that [sic] it was prior to and during the early phase of the fishery.'' Moreover, Stewart concludes that depleted stocks had begun to recover after direct mortality declined below the replacement rate in the 1980s, but that this recovery may have been interrupted by warm water events in the 1990s. Barber notes that, ''There are indications that the biological productivity of the ETP has changed in response to the low-frequency physical variability known as PDO. These indications, while speculative, require that we not rule out the possibility that the carrying capacity of the ETP for dolphins has declined and that this decline has affected recovery of the population. * * * We also cannot rule out the possibility that the ecological structure of the ETP has changed substantially in a way that could impede the recovery of the dolphin stocks.''

Panel experts agree with NOAA's view that there is insufficient information to adequately assess the existence or magnitude of ecosystem changes, or the extent to which these changes have impacted depleted dolphins. As one expert noted, ''* * * we do not have a sufficient understanding of the structure or function of the ETP ecosystem to answer this question. Our knowledge of the ecological interactions of dolphins and other ecosystem components, including yellowfin tuna, is so rudimentary that in most cases, we cannot predict whether a particular environmental change might promote or impede the population growth of dolphins. Furthermore, we do not have a sufficient time-scale of observations to allow tests of hypotheses regarding such ecological changes and their effects.'' (Report of Andrew Read).

Comments of the IATTC state that between 1986–1990 and 1998–2000, population surveys indicate that large numbers of non-depleted dolphins moved into the fishery off Central America. By competing for common food sources, this migration could have significantly affected the carrying capacity of depleted dolphins and hindered recovery. The MMC commented that available information is insufficient to support a conclusion that ecosystem changes have impacted dolphin recovery, but the MMC provided no additional information on this point.

Based upon the above information, remaining data gaps, and expert opinions, NOAA Fisheries cannot determine whether the carrying capacity of the ETP for dolphins has declined substantially or that the ecological structure of the ETP has changed substantially in a way that could impede depleted dolphin stocks from growing at rates expected in a static ecosystem.

The Direct Mortality Question. For any depleted stock, does the estimate of the total fishery-attributed dolphin mortality, obtained by adding together estimates of direct mortality and, where appropriate, quantifiable levels of indirect mortality, exceed the mortality standard considered appropriate by the Secretary?

Direct mortality as reported by observers is a known and easily quantifiable impact of the tuna purse seine fishery on depleted ETP dolphin stocks. To answer this question, NOAA Fisheries calculated the potential biological removal (PBR) levels for each depleted dolphin stock in the ETP. The PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size. Direct mortality and estimates of indirect mortality (where appropriate) were compared to the PBR levels and other mortality standards for each stock. Additionally, possible changes in the carrying capacity and/or the ecosystem structure of the ETP were considered but deemed scientifically inconclusive.

The ODP calls for comparison between the level of direct mortality and a ''mortality standard considered appropriate by the Secretary.'' The ODP therefore allows flexibility in determining what the threshold should be, specifically because the results of analyses on indirect mortality as well as ecosystem changes might have called for a threshold lower than PBR. For example, if there had been sufficient sample sizes to make population-level inferences of the impact of indirect effects, and/or if there had been strong evidence of a dramatic reduction in carrying capacity due to ecosystem changes, then a level of mortality close to PBR might have been considered too high.

The average of the abundance estimates for the most recent surveys are 641,153 northeastern offshore spotted dolphins, 448,608 eastern spinner dolphins, and 143,725 coastal spotted dolphins. The coefficients of variation (CV) for these estimates are approximately 17%, 23%, and 36%, respectively. CV is a measure of the variability of the estimate. Much of the essential information regarding coastal spotted dolphins is lacking, especially from the early years of the fishery. This lack of information prevents NOAA Fisheries from further refining the precision of this stock's abundance estimation.

Reported levels of dolphin mortality for each stock have been very low in recent years (far less than PBR levels for approximately a decade) and have only rarely exceeded the strict stock-specific mortality limits set forth by the IDCP. These stock mortality limits (SMLs) are roughly 10% of the PBR standard. For this decision, the PBR standard, an established standard of mortality, provides the best insight into the significance of reported mortality to the dolphin stocks. By contrast, SMLs are not strictly science-based values, but rather reflect the lowest possible mortality achievable by the fishery and values that should be biologically insignificant to dolphin stocks. Comparing reported mortality to established standards of mortality, such as the PBR and the SML systems, can provide insight into the significance of reported mortality to the dolphin stocks. In 2001, the most recent year for which annual mortality estimates are available, the total reported mortality was 466 eastern spinner dolphins, 656 northeastern offshore spotted dolphins, and two spotted dolphins. PBR levels during this same time period were for 1298 eastern spinner dolphins, 2367 northeastern offshore spotted dolphins, and 1073 coastal spotted dolphins.

The only source of quantifiable information on levels of indirect mortality comes from investigations into the separation of cow-calf pairs during fishing operations. Analyses of purse seine sets from 1973 to 1990, in which all killed dolphins were examined, led to the conclusion that there is some separation of calves from their mothers. Based on reasonable assumptions about length of nursing dependency, NOAA Fisheries estimated that mortality was underestimated by 10–15% for spotted dolphins and 6–10% for spinner dolphins in this sample. Reported mortality for 2001, when combined with cow-calf separation estimates, is approximately: 31% of PBR for northeastern offshore spotted dolphin and 39% of PBR for eastern spinner dolphin. There is currently no way to quantify indirect mortality for coastal spotted dolphins. Therefore, direct mortality is based on that reported by the on-board observer programs and is only 0.2% of PBR for coastal spotted dolphin. When reported mortality for 2001 is combined with the estimate of cow-calf separation, quantifiable direct mortality is well below the PBR level for each stock.

NOAA Fisheries has a relatively high degree of confidence in both the dolphin abundance estimates and in a minimum estimate of mortality owed to cow-calf separation. Additionally, the IDCP utilizes 100% observer coverage to obtain dolphin mortality information, so unlike most other fisheries around the world, dolphin mortality is enumerated rather than estimated. Based on these data, information regarding dolphin mortality in the fishery obtained through the IDCP, and in consideration of the opinions of the Ecosystem Expert Panel, direct mortality does not exceed PBR, or any other appropriate mortality standard, for any of the depleted dolphin stocks.

The Indirect Effects Question. For each stock, is the estimated number of dolphins affected by the tuna fishery, considering data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, and other relevant indirect effects information, at a magnitude and degree that would risk recovery or appreciably delay recovery to its optimum sustainable population (OSP) level (how and to what degree)?

While direct mortality from sources in the tuna fishery causes a known impact on dolphin stocks, there are possible means by which the fishery could be indirectly impacting dolphins. Therefore, an assessment of indirect effects is relevant to making the final finding. Sources of indirect mortality include cow-calf separation and may include other types of effects resulting from chase and capture, which could compromise the health of at least some of the dolphins involved. The answer to this question was based on information collected and/or evaluated by NOAA Fisheries, as well as on opinions of individual members of a panel of independent scientific experts in veterinary science, physiology, and other stress-related fields (the Indirect Effects Panel).

In the aggregate, available data suggest the possibility that purse-seining activities result in indirect effects that negatively impact dolphins. However, available data are insufficient to determine whether the fishery is causing indirect effects of sufficient magnitude to either risk recovery or appreciably delay recovery. Completed research has included a combination of field experiments, retrospective analyses, direct observation, and mathematical modeling, to address a

broad range of stress-related effects and other factors that might lead to unobserved dolphin mortalities. These data, however, are insufficient to quantify potential population-level impacts or determine whether population recovery might be delayed, because sample sizes were small and baseline data unavailable. For example, in implementing a specifically mandated necropsy program that was conducted between 1998 and 2000, it was possible to obtain samples from only 56 dolphins; a number that is insufficient to make population-level inferences. Additionally, a chase-encirclement stress study, was conducted during August and October of 2001. Because of the experiment's complexity and logistical challenges, it was recognized from the outset that sample sizes for the studies would be limited and that population-level inferences were unlikely.

Notwithstanding these data limitations, NOAA Fisheries examined specific indirect effects that may negatively impact dolphin stocks. Specifically, NOAA Fisheries examined the possibility that cow-calf pairs are separated during chase and encirclement, causing the subsequent death of the calf. Analyses of purse-seine sets suggests that some separation occurs. However, more conclusive mortality estimates relative to chase do not exist, as direct observations currently are not feasible. Additional mortality associated with separation is possible in instances where dolphins are chased but not encircled. However, mortality estimates relative to chase do not exist, as direct observations are not feasible. Even if correct, estimates of confirmed indirect dolphin mortality due to cow-calf separation do not substantially increase the total levels of mortality for each stock.

Additionally, NOAA Fisheries investigated the frequency with which the fishery interacts with individual dolphins and with the dolphin stocks as a whole each year. For northeastern offshore spotted dolphins, there are over 5,000 dolphin sets per year, resulting in 6.8 million dolphins chased per year and 2.0 million dolphins encircled per year (on average for 1998–2000). For eastern spinner dolphins, there are about 2,500 sets per year, 2.5 million dolphins chased per year, and 300,000 dolphins encircled per year. For coastal spotted dolphins, there are about 154 sets per year, 284,300 dolphins chased per year, and 39,700 dolphins captured per year. NOAA Fisheries estimated that a northeastern offshore spotted dolphin is chased 10.6 and encircled 3.2 times, an eastern spinner dolphin is chased 5.6 and encircled 0.7, and a coastal spotted dolphin is chased 2.0 times and encircled 0.3 times per year on average. Unfortunately, there is much uncertainty surrounding these statistically estimated averages. Moreover, there are insufficient data to determine the impact of stress and other chase-related effects on dolphin populations. Additional research must be done on this before there will be sufficient data to yield definitive results.

Experts noted that there is inadequate information to make a determination on the existence or extent of indirect effects, as they relate to dolphin recovery. To assist the Secretary in answering this difficult question, a panel of five experts was asked to address the issue of indirect mortality. All five expert panelists indicated that indirect fishery effects, especially cow-calf separation and increased likelihood of predation, may account for the lack of expected dolphin recovery. The strength of their opinions varied greatly, however, noting the large amounts of uncertainty in the data. The IATTC noted that indirect effects (such as cow-calf separation, elevated stress hormones and enzymes, and heart damage) are speculative, given the absence of adequate data. The MMC provided no additional studies, but agreed that, ''* * * existing information does not provide a sufficient basis for quantifying any increased levels of mortality that occur during chase operations, reproductive failure resulting from stress, facilitated predation, post-release capture myopathy, or disruption of the tuna-dolphin bond.''

In sum the available information on indirect effects, including much of the information regarding cow-calf separation, is limited, and therefore bars population-level inferences of the effects of stress on dolphin stocks. Additional research is necessary to better understand these more complex effects on dolphin stocks. Accordingly, the best available information, including data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, the Expert Panel opinions, and other relevant information, indicates that indirect effects caused by purse-seine fishing are not impacting dolphins to a degree that would risk or appreciably delay recovery to optimum population levels.

The Growth Rate Question. For each depleted dolphin stock, is the observed population growth rate sufficient to ensure that each stock's recovery to OSP is not appreciably delayed?

To answer this question, NOAA Fisheries fit a population model to a time series of research vessel abundance estimates, using the time series of estimates of the incidental mortality from tuna vessel observer data (TVOD) collected by IATTC and national program observers, as well as TVOD as indices of abundance in a subset of the analyses. NOAA Fisheries also estimated growth rates for each dolphin stock and measures of uncertainty for each estimate. Finally, assessments from the members of the Ecosystem Panel were used when considering the estimated growth rates.

The assessment modeling produced additional information on the current depletion levels of two of the three depleted dolphin stocks. Depleted means that a marine mammal population's abundance is less than 60% of its carrying capacity or the maximum size of a particular population that can be sustained within a given area or habitat. Northeastern offshore spotted dolphins are at 20% and eastern spinner dolphins at 35% of their pre-fishery population levels and thus remain depleted under the MMPA. Similar estimates for coastal spotted dolphins are unavailable, due to a lack of data on fishery-related mortality and time-series abundance estimates from the early years of the fishery.

NOAA Fisheries estimated a ''one-slope'' and ''two-slope'' model of growth rates for dolphin populations. While the one-slope model assumes a constant growth over the period studied, the two-slope model allows for a change in the growth rate. The one-slope model indicates that the dolphin stocks are growing at low rates (1–2%) although there is a 95% confidence that they are not declining. The two-slope model results indicate that the growth rate decreased, but was still positive, for one stock but became negative for a second stock during this past decade. The two models produce roughly equally probable results.

Another important consideration in assessing the impact of the fishery on depleted stocks is to determine the time to recovery for these stocks under current conditions. Using the growth rates mentioned above in a population model, estimated times to recovery were determined for these two stocks. When abundances of the depleted stocks are projected into the future, the one-slope model predicts recovery in 78 years for northeastern offshore spotted dolphins, and in 65 years for eastern spinner dolphins. The two-slope model, having roughly equivalent support by the data, predicts that neither stock would recover in at least 200 years. This two-

slope model shows that the northeastern offshore spotted dolphin abundance would stay constant, while eastern spinner abundance would decline, assuming that there have been no change in carrying capacity since the late 1950s.

[FR Doc. 03–798 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice, Roundtable on Convergence of Communications Technologies, ''Voice over Internet Protocol (VoIP)''

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will host an afternoon roundtable discussion on Voice over Internet Protocol (VoIP). The roundtable will address the technical and functional aspects of VoIP, the state of the VoIP marketplace, and the policy and regulatory issues that may arise with use of such convergence technology.

DATES: The roundtable will be held 1 p.m. to 5 p.m., Wednesday, February 12, 2003.

ADDRESSES: The roundtable will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC in Room 4830. (Entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania avenues.) This roundtable is open to the public. To facilitate entry into the Department of Commerce, please have a photo identification and/or U.S. Government building pass, if applicable.

FOR FURTHER INFORMATION CONTACT: Jennifer Guy, Office of the Assistant Secretary for Communications and Information, at (202) 482–1840, or electronic mail: *jguy@ntia.doc.gov.* Media inquiries should be directed to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: Advancements in the development of Internet Protocol (IP) technologies are expanding the viability of IP-based networks to support additional features, including the transmission of voice, commonly referred to as VoIP. While traditional telephone service uses circuit-switched technology to establish a dedicated line between communicating parties, VoIP applications use packet-switched technology that divides the voice transmission into packets of data and sends them over the fastest available route. VoIP systems may use bandwidth more efficiently and may represent cost savings for providers and subscribers by using a single network for both voice and data. VoIP has been developing over the last decade, with a number of companies already deploying the service or announcing introduction in the near future.

NTIA's roundtable will address the issues necessary to understand VoIP, how it works, the marketplace trends, and the impacts VoIP may have on communications and information policies and regulations. As the principal adviser to the President on communications and information policies, NTIA is vested with ''[t]he authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology.'' 47 U.S.C. § 902(M). The roundtable dialogue will help the Administration to better understand the technology, its relation to the telecommunications market, especially to broadband, and prepare for participation in other venues, including the International Telecommunications Union (ITU).

The roundtable will be divided into three sessions. First, NTIA will present a brief overview of VoIP, featuring a demonstration of VoIP technology using the Commerce Department's newly-installed VoIP telephone system. Two panel discussions will follow: the first panel will focus on the VoIP marketplace, and the second panel will address policy considerations for VoIP. Each of these sessions will also include a brief audience question and answer session.

The roundtable will be webcast. A final, updated copy of the agenda, including a link for the webcast will be available on NTIA's web page at *www.ntia.doc.gov*.

Public Participation

This meeting will be open to the public. Seating for public attendees is limited and is available on a first-come, first served basis. The roundtable will be physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Jennifer Guy (see contact information above) at least three (3) days prior to the meeting.

Dated: January 9, 2003.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 03–801 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Public Key Infrastructure (PKI) Certificate Action Form

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 17, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Fred Whiteside, Information Technology Security Program Office, USPTO, Washington, DC 20231; by telephone at (703) 308–6973; or by electronic mail at *frederick.whiteside@uspto.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

The Government Paperwork Elimination Act (GPEA) directs federal agencies to implement electronic commerce systems that will enable the collection and dissemination of information while also ensuring the security and validity of information that is transmitted electronically. In support of the GPEA and its own electronic filing initiatives, the United States Patent and Trademark Office (USPTO) has implemented Public Key Infrastructure (PKI) technology to support electronic commerce between the USPTO and its customers. PKI is a set of hardware, software, policies and procedures used to provide several important security services for the electronic business activities of the USPTO. Using PKI ensures the

confidentiality of unpublished patent applications in accordance with 35 U.S.C. 122 and Article 30 of the Patent Cooperation Treaty.

In order to provide the necessary security for its electronic commerce system, the USPTO uses PKI technology to protect the integrity and confidentiality of information submitted electronically to the USPTO. PKI employs public and private encryption keys to authenticate the customer's identity and support secure communication between the customer and the USPTO. Customers may submit a request to the USPTO for a digital certificate, which enables the customer to download and use the Entrust cryptographic software to create the encryption keys necessary for electronic identity verification and secure transactions with the USPTO. This digital certificate is required in order to access secure online systems that are provided by the USPTO, such as obtaining patent application information through the Patent Application Information Retrieval (PAIR) system or filing patent applications and related documents electronically.

This information collection includes the Certificate Action Form (PTO–2042), which is used by the public to request a digital certificate. This form is available for download from the USPTO Web site. This form may also be used by customers to request the revocation of a digital certificate or key recovery in the event of a lost or corrupted certificate. Requests for a certificate must include a notarized signature in order to verify the identity of the applicant. In addition, a Subscriber Agreement is included with the Certificate Action Form to ensure that customers understand their obligations regarding the use of the digital certificates as well as the Entrust software, which authorized users may download from the USPTO Web site. The Certificate Action Form collects personal information that is subject to the Privacy Act of 1974 and is covered by a System of Records Notice that was published in the **Federal Register** (Vol. 65, No. 80) on April 25, 2000.

II. Method of Collection

By mail or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0045.

Form Number(s): PTO–2042.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and State, local or tribal governments.

Estimated Number of Respondents: 8,000 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to read the instructions and Subscriber Agreement, gather the necessary information, prepare, and submit the Certificate Action Form (PTO–2042).

Estimated Total Annual Respondent Burden Hours: 4,000 hours per year.

Estimated Total Annual Respondent Cost Burden: $564,000 per year. The USPTO expects that the information in this collection will be prepared by attorneys and paraprofessionals, as well as independent inventors. Using the professional rate of $252 per hour for associate attorneys in private firms and the rate of $30 per hour for paraprofessionals and independent inventors, the USPTO estimates that the average hourly rate for all respondents for this collection will be $141 per hour. Therefore, the respondent cost burden for this collection will be $564,000 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Certificate Action Form (including Subscriber Agreement)	30 minutes	8,000	4,000
Total		8,000	4,000

Estimated Total Annual Non-hour Respondent Cost Burden: $2,960. There are no capital start-up or maintenance costs or filing fees associated with this information collection. However, customers may incur postage costs when submitting the Certificate Action Form to the USPTO by mail. The USPTO estimates that the first-class postage cost for a mailed Certificate Action Form will be 37 cents, for a total non-hour respondent cost burden in the form of postage costs of $2,960 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 8, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–773 Filed 1–14–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed reinstatement of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information

collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before March 17, 2003.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity, Health Program Analysis and Evaluation, 5111 Leesburg Pike, Falls Church, VA, Attn: Ms. Kim Frazier.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address. Or call TRICARE Management Activity 703–681–3636.

Title, Associated Forms, and OMB Number: Armed Forces Health Professions Loan Repayment Program Loan Information Form.

Needs and Uses: Form will be used by Loan program participants, to submit to lenders through their Service Representatives, to obtain verification of loan application data.

Affected Public: Individuals or household, Federal government.

Annual Burden Hours: 50.

Number of Respondents: 100.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion, only when a beneficiary is insured under circumstances creating possible liability in a third party.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10, U.S.C., requires applicants to submit this form, to their Service representative, prior to participation in the Health Loan Repayment Program (HPLR). Lenders will verify the data submitted and respond back to the Service Representative. All loans must meet federal standards and be approved by the Defense Finance and Accounting Service prior to disbursement of funds.

Dated: January 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–783 Filed 1–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 14, 2003.

Title, Form Number, and OMB Number: Candidate Procedures; USMA Forms 21–16, 21–23, 21–25, 21–26, 5–520, 5–518, FL 546, FL 481, 5–2, 5–26, 5–515, FL 480–1, FL 520, FL 261, 21–8, 21–14, 5–497; OMB Number 0702–0061.

Type of Request: Reinstatement.

Number of Respondents: 92,525.

Responses per Respondent: 1.

Annual Responses: 92,525.

Average Burden per Response: 225 minutes (average).

Annual Burden Hours: 11,720.

Needs and Uses: Candidates to the United States Military Academy (USMA) provide personal background information, which allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher, at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–782 Filed 1–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on Wednesday, January 29, 2003, at the Pentagon, Washington, DC from 0900 until 1000. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Human Resource Task Group will deliberate on its findings and proposed recommendations related to tasks assigned last year. Additional, task groups may deliberate on proposed recommendations.

DATES: Wednesday, January 29, 2003, 0900 to 1000 hrs.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Washington, DC 20301–1100, via E-mail *DBB@osd.pentagon.mil,* or via phone at (703) 695–0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the DBB no later than Wednesday, January 22 for further information about admission as seating is limited.

Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by Tuesday, January 21 to allow time for distribution to the Board members prior to the meeting.

Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: January 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–781 Filed 1–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Alternative Fuel Vehicle Acquisition Reports

AGENCY: Department of Defense.

ACTION: Notice of availability.

SUMMARY: Pursuant to 42 United States Code 13218, the Department of Defense gives notice that the Department's 1998–2001 alternative fuel vehicle compliance reports are available on-line at *https://www.denix.osd.mil/denix/Public/Library/AFV/afv.html.* The 2002 reports are being prepared and will be posted to this site. Additional information concerning the Department's alternative fuel vehicle program is contained in the Defense Environmental Quality Program Annual Reports to Congress, available on line at *https://www.denix.osd.mil/denix/Public/News/news.html#osd.*

FOR FURTHER INFORMATION CONTACT: Lt Col Bruce Harding at (703) 604–1831, or via e-mail at *bruce.harding@osd.mil.*

Dated: January 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–780 Filed 1–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 02–97–NG]

Bay State Gas Company; Order Granting Long-Term Authority to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that on January 7, 2003, it issued DOE/FE Order No. 1843 granting Bay State Gas Company (Bay State) authority to import up to 62,748 Mcf per day of natural gas from Canada, beginning on January 15, 2003, and extending through April 1, 2005. The natural gas will be purchased from ENCANA Corporation to serve its customers in Massachusetts.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 9, 2003.

Clifford Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

[FR Doc. 03–882 Filed 1–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. PP–230–3]

Application to Transfer Presidential Permit; International Transmission Company, ITC Holdings Corp, DTE Energy Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: International Transmission Company (ITC), ITC Holdings Corp., and DTE Energy Company have jointly applied to transfer Presidential Permit PP–230–2 from ITC to a new corporate entity that will not be affiliated with DTE Energy.

DATES: Comments, protests or requests to intervene must be submitted on or before January 30, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Existing Presidential permits are not transferable or assignable. However, in the event of a proposed voluntary transfer of facilities, in accordance with the regulations at 10 CFR 205.323, the existing permit holder and the transferee are required to file a joint application with DOE that includes a statement of reasons for the transfer.

On April 19, 2001, DOE granted Presidential Permit PP–235–2 to ITC for four existing international electric transmission facilities that cross the U.S.-Canadian border. These permitted facilities include:

(1) One 230,000-volt (230–kV) transmission line, including one 675-MVA phase-shifting transformer connecting the Bunce Creek Station, located in Marysville, Michigan, with Hydro One's Scott Transformer Station, located in Sarnia, Ontario (identified as the B3N facility);

(2) One 230–kV transmission line connecting the Waterman Station, located in Detroit, Michigan, with Hydro One's J. Clark Keith Generating Station, located in Windsor, Ontario (identified as the J5D facility);

(3) One 345–kV transmission line connecting the St. Clair Generating Station, located in East China Township, Michigan, with Hydro One's Lambton Generating Station, located in Moore Township, Ontario (identified as the L4D facility); and

(4) One 230–kV transmission line connecting the St. Clair Generating Station with Hydro One's Lambton Generating Station (identified as the L51D facility).

Presidential permits originally were granted to Detroit Edison for the construction, operation, maintenance, and connection of these facilities. However, as a result of a series of corporate actions and divestitures, these facilities were transferred to ITC.

On January 6, 2003, ITC, ITC Holdings Corp., and DTE Energy Company (collectively, the ''Applicants'') jointly filed an application with DOE to transfer Presidential Permit PP–230–2 from ITC to a new corporate entity that will be created following a series of corporate restructurings. The purpose of the joint application is to ensure that the authority contained in the Presidential permit will continue in force and be transferred from one corporate entity to the next as the series of corporate restructurings are accomplished and the subject facilities are voluntarily transferred. In the instant application, the Applicants indicate that there will be no physical changes to any of the existing permitted facilities and that the subject facilities will continue to be operated in accordance with all of the terms and conditions contained in Presidential Permit PP–230–2.

The Applicants are expecting that the Federal Energy Regulatory Commission will take final action on the series of corporate restructurings by February 20, 2003, and the Applicants have requested that DOE expedite the processing of this application so that a final decision on the request to transfer the Presidential permit be completed by that date. Accordingly, DOE has

shortened the comment period for this proceeding to 15 days.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the joint application to transfer Presidential Permit PP–230–2 should be clearly marked with Docket PP–230–3. Additional copies are to be filed directly with M. Douglas Dunn, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, R. Michael Sweeney and Bonnie A. Suchman, Troutman Sanders LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004, and Raymond O. Sturdy, Jr., DTE Energy Company, 2000 2nd Avenue, Detroit, MI 48226.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on January 10, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–881 Filed 1–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–013]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

January 9, 2003.

Take notice that on December 31, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing two executed service agreements between Transco and BP Energy Company that contain negotiated rates under Transco's Rate Schedule FT.

Transco states that these service agreements are the result of the permanent releases of two service agreements containing negotiated rates previously filed by Transco pertaining to its MarketLink and Leidy East Expansion Projects. Aquila Energy Marketing (Aquila), one of Transco's MarketLink and Leidy East shippers, agreed to permanently release all of its firm MarketLink transportation service (25,000 dekatherms of gas per day) and all of its firm Leidy East transportation service (25,000 dekatherms of gas per day) to BP Energy Company effective January 1, 2003, at the same negotiated rates and primary term contained in Aquila's existing service agreements. For both service agreements, the effective date of the permanent release is January 1, 2003.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–890 Filed 1–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for a New License

January 9, 2003.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing*: Notice of Intent to File an Application for New License.

b. *Project No*: 2230.

c. *Date filed*: November 13, 2002.

d. *Submitted By*: City and Borough of Sitka, Alaska.

e. *Name of Project:* Blue Lake Hydroelectric Project.

f. *Location:* The Blue Lake project is located 5 miles east of the City of Sitka, on Sawmill Creek (formerly Medvetcha River) at stream mile 2.7.

g. *Filed Pursuant to*: Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at the City and Borough of Sitka, 105 Jarvis Street, Sitka, Alaska 99835, (907) 747–6633.

i. *FERC Contact:* Nicholas Jayjack, 202–502–6073, *Nicholas.Jayjack@ferc.gov*.

j. *Expiration Date of Current License*: March 31, 2008.

k. *Project Description*: The project includes a 211-foot high dam with a crest length of 256 feet, a submerged concrete intake structure, a 1,225-acre reservoir (Blue Lake), a 7,110-foot long power conduit consisting of both steel penstock and unlined tunnel segments, three powerhouses with a combined capacity of 7.5 megawatts, and three transmission lines with a combined length of 6.5 miles. The project occupies

812 acres of U.S. lands administered by the U.S. Forest Service.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2230. Pursuant to 18 CFR 16.9(b)(1), each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2006.

A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–888 Filed 1–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–085]

Notice of Application for Non-project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

January 9, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands.

b. *Project No*: 349–085.

c. *Date Filed:* December 17, 2002.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* The project is located on the Tallapoosa River in the counties of Coosa, Elmore, and Tallapoosa, Alabama. The Willow Point Golf and Country Club site does not involve federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Alan L. Peeples, Alabama Power Company, P.O. Box 2641, 600 North 18th Street, Birmingham, Alabama, 35291. Telephone (205) 257–1401, or E-mail address: *alpeeple@southernco.com*.

i. FERC Contacts: Any questions on this notice should be addressed to: Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov* .

j. Deadline for filing comments and or motions: January 31, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–349–085) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Requests*: The licensee proposes to grant an easement for the renovation of the golf course at Willow Point Golf and Country Club on Lake Martin in Tallapoosa County, Alabama. The proposal includes the mechanical excavation from the lake bottom of 2110 cubic yards of material. About 1200 cubic yards of this excavated material will be used to fill 0.16 acres of Martin Reservoir with the remaining material placed at other non-project locations on the golf course. This will result in approximately 910 cubic yards net increase in the storage volume of the reservoir. Finally, the proposal includes the addition of two rock boulder seawalls. One seawall will be located in the area of the excavation work and will be approximately 462.5 feet long. The second seawall will be approximately 225 feet long and will be located along the existing shoreline which will be backfilled to the 490-foot project boundary.

l. *Location of the Applications*: The filing is available for review at the Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCONLINESUPPORT@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–889 Filed 1–14–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0329; FRL–7282–9]

Asulam; Availability of Tolerance Reassessment Eligibility Decision Documents for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period on the Tolerance Reassessment Eligibility Decision (TRED) documents for the pesticide active ingredient asulam. The TRED represents EPA's formal regulatory assessment of the human health data base of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Comments, identified by docket ID number OPP–2002–0329, must be received on or before March 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Chemical Review Manager, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; e-mail address: fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0329. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs

further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0329. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0329. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0329.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0329. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA has assessed the risks of asulam and reached a Tolerance Reassessment Eligibility Decision (TRED) for this pesticide. Since no risk mitigation measures were adopted, asulam fits into its own risk cup--its individual, aggregate risks are within acceptable levels. The RED for asulam was completed in 1995. At that time, the Agency assessed the risk for dietary, worker, and ecological concerns. With the passage of FQPA, the tolerances for asulam needed to be reassessed according to the FQPA safety standard. In this current assessment, the Agency looked at only dietary concerns from food and drinking water.

Asulam is a selective postemergent systemic carbamate herbicide registered for sugarcane, christmas tree plantations, ornamentals, turf (use for sod farms only) and non-cropland uses (boundary fences, fencerows, hedgerows, lumberyards, storage areas and industrial facilities, and warehouse lots). There are no residential uses for asulam products.

Dietary risks for asulam are below the Agency's level of concern for the general U.S. population and all population subgroups. Drinking water risks are also below EPA's level of concern, therefore the Agency is not concerned with potential exposure to asulam through surface water and ground water.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely decisions and to involve the public. Therefore, EPA is issuing this TRED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. If any comment significantly affects a TRED, EPA will amend the TRED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this TRED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products, and either reregistering

products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 19, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

FR Doc. 03–849 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0246; FRL–7284–4]

Bis(Tributyltin) Oxide and Tributyltin Methacrylate; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by International Paint Inc. and Hempel Coatings (USA), Inc. to voluntarily cancel registrations of three antifouling paint products containing tributyltin compounds. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register** and provide for a 30–day comment period.

DATES: Comments must be received on or before February 14, 2003.

FOR FURTHER INFORMATION CONTACT: By mail: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Room 604W53, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8019; e-mail: bloom.jill@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although, this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0246. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0246 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0246. Electronic comments also may be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel certain pesticide products registered under section 3 of FIFRA. International Paint Inc. has voluntarily requested that EPA cancel two of its product registrations containing tributyltin compounds. Hempel Coatings (USA), Inc. has voluntarily

requested that EPA cancel its sole product registration containing tributyltin compounds. These registrations are listed in Table 1 of this unit:

TABLE 1.–REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Company Name	Registration number	Product Name	Active Ingredients
International Paint Inc.	67543–8	XL–48	Tributyltin methacrylate
International Paint Inc.	2693–123	Interswift BKA007 Red	Bis(tributyltin)oxide tributyltin methacrylate
Hempel Coatings (USA),	10250–53	Hempel's Antifouling Combic 76990–51110 Red	Bis(tributyltin)oxide tributyltin methacrylate

International Paint Inc. requested these actions in letters dated May 17, 2002 and June 3, 2002 for its products with EPA registration numbers 67543–8 and 2693–123, respectively. On June 19, 2002, International Paint Inc. requested that it be allowed to continue to sell and distribute existing stocks of these products until December 1, 2002. On July 26, 2002, International Paint Inc. waived the 180–day period that typically has been allowed before certain requests for voluntary cancellation are approved or denied.

Hempel Coatings (USA), Inc. requested the voluntary cancellation of its product with EPA registration number 10250–53 in a letter dated July 8, 2002. In that same letter, the registrant requested that it be allowed to continue to sell and distribute existing stocks of the subject product until December 31, 2002, and waived the 180–day period that typically has been allowed before certain requests for voluntary cancellation are approved or denied.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in ascending sequence by EPA company number:

TABLE 2.–REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
2693	International Paint Inc. 2270 Morris Avenue Union, NJ 07083
10250	Hempel Coatings (USA). Inc. 600 Conroe Park North Conroe, TX 77303–5056
67543	International Paint Inc. 2270 Morris Avenue Union, NJ 07083

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide a 30–day period for comments on the notice. Thereafter, the Administrator may act on such a request.

IV. Procedures for Withdrawal of Request

Both International Paint Inc. and Hempel Coatings (USA), Inc. have waived any right to withdraw their requests for voluntary cancellation of the products listed in Table 1 in Unit II.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term ''existing stocks'' will be defined, pursuant to the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless, the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Any sale, distribution, or use of existing stocks after the effective date of the cancellation order that is not consistent with the terms of the cancellation order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA, unless it is for purposes of shipping such stocks for relabeling, repackaging, export consistent with the requirements of section 17 of FIFRA, or disposal.

In the cancellation orders issued in response to the requests for voluntary cancellation cited in this notice, the Agency proposes to include the following provisions for treatment of any existing stocks of the products identified in Table 1 in Unit II.

All sale, distribution, or use by International Paint Inc. of existing stocks of its affected products listed in Table 1 in Unit II. will be unlawful under FIFRA after December 1, 2002. Any stocks of such products not in the hands of the registrant may continue to be sold, distributed, and used until such stocks are exhausted.

All sale, distribution, or use by Hempel Coatings (USA), Inc. of existing stocks of its affected product listed in Table 1 in Unit II. will be unlawful under FIFRA after December 31, 2002. Any stocks of such products not in the hands of the registrant may continue to be sold, distributed, and used until such stocks are exhausted.

List of Subjects

Environmental protection, Pesticides and pests.

December 24, 2002.

Lois Rossi,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 03–613 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0339; FRL–7285–1]

Fluroxypyr; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of fluroxypyr in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0339, must be received on or before February 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0339. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0339. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2002–0339. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0339.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0339. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 31, 2002.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences

PP 9F6050

EPA has received a pesticide petition (9F6050) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for combined residues of fluroxypyr 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dicloro-6-fluoro-2-pyridinyl)oxy)acetate or fluroxypyr MHE] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid], free and conjugated, all expressed as fluroxypyr, in or on the following raw

agricultural commodities at 0.02 parts per million (ppm) for kernels plus cob with husk removed, and 1.0 ppm for forage. Tolerances for residues of fluroxypyr MHE in or on field corn are being proposed in support of this registration as follows: Grain, 0.02 ppm; forage, 1.0 ppm; and stover, 0.5 ppm. Tolerances for residues of fluroxypyr MHE in or on sorghum as follows: Sorghum grain, 0.02 ppm; sorghum forage, 2.0 ppm; sorghum stover, 4.0 ppm. Tolerances for residues of fluroxypyr MHE in or on grasses as follows: Grass forage, 120 ppm; grass hay, 160 ppm; and grass silage, 100 ppm. Based on the above tolerances and an animal feeding study, increased tolerances are also proposed for fluroxypyr MHE and fluroxypyr, expressed as combined residues of total fluroxypyr, in or on the following animal commodities: Milk of cattle, goats, hogs, horses and sheep, 0.3 ppm; and kidney of cattle, goats, hogs, horses and sheep, 1.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Fluroxypyr is a systemic herbicide that is readily translocated and rapidly converts to the acid form following absorption. Fluroxypyr moves readily throughout the plant via the phloem (nutrient transporting) system and to a lesser extent through the xylem (water-transporting). Fluroxypyr is distributed throughout the entire plant, including the meristems and other developing plant parts.

2. *Analytical method*. There is a practical method (GC with MS detection) for measuring levels of fluroxypyr MHE in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for, the proposed tolerances. Fluroxypyr has been tested through the FDAs Multi-residue Methodology, Protocols C, D. and E. The results have been published in the FDA Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues*. The metabolism of fluroxypyr MHE in plants and animals (goats and poultry) is adequately understood for the purposes of these tolerances. Magnitudes of residue studies were conducted for field corn, sweet corn, sorghum and grasses. A process products study was not conducted in field corn since residues of fluroxypyr MHE were not detected in corn grain at 5X the application rate. In addition, processing of sorghum was not conducted since residue data for flour are not required at this time because sorghum flour is used exclusively in the U.S. as a component for drywall, and not as either a human food or a feedstuff. No residues of fluroxypyr are expected in root or leafy vegetable crops grown in rotation to fluroxypyr-treated field corn, sweet corn, sorghum, and grasses, after a 30–day plant-back interval at the maximum allowable label rate of 8 oz active ingredient/Acre. Field corn, sweet corn, sorghum and grasses grown in rotation may contain low levels of fluroxypyr residues; however, the tolerance values proposed for these crops will adequately assure compliance with the labeled use patterns.

B. Toxicological Profile

1. *Acute toxicity*. Fluroxypyr MHE has low acute toxicity. The rat oral LD_{50} is >5,000 milligrams/kilogram (mg/kg), the rabbit dermal LD_{50} is >2,000 mg/kg, and the rat inhalation LC_{50} is >1.0 mg/L (1,000 mg/cubic meter). In addition, fluroxypyr MHE is not a skin sensitizer in guinea pigs, has no dermal irritation in rabbits, and shows mild ocular irritation in rabbits. The end use formulation of fluroxypyr MHE has a similar low acute toxicity profile.

2. *Genotoxicity*. Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* chromosomal aberration assay using rat lymphocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with fluroxypyr MHE. These studies show a lack of genotoxicity. In addition, short-term assays for genotoxicity consisting of an Ames metabolic activation test, possible induction of point mutations at the HGPRT-Locus of Chinese hamster ovary cells, *in vivo* and *in vitro* chromosomal aberrations in the Chinese hamster ovary cells, unscheduled DNA synthesis in human embryonic cells, and an assay in mouse lymphoma cells have been conducted with fluroxypyr. These studies also show a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Developmental studies in rats and rabbits were conducted with both fluroxypyr MHE and fluroxypyr. Studies with fluroxypyr MHE showed maternal and fetal no observed adverse effect levels (NOAELs) of 300 mg/kg/day (rat) and 500 mg/kg/day (rabbit). Studies with fluroxypyr showed NOAELs in the rat of 250 mg/kg/day for maternal effects and 500 mg/kg/day for fetal effects and a NOAEL in the rabbit of 250 mg/kg/day for both maternal and fetal effects. These studies show that fluroxypyr and fluroxypyr MHE are not teratogenic nor will they interfere with *in utero* development. Two multi-generation reproduction studies were conducted with fluroxypyr in rats. The first in Wistar rats showed no effect on fertility or reproductive performance and had a NOAEL of 500 mg/kg/day (highest dose tested). The second study in Sprague-Dawley rats showed a parental NOAEL for systemic effects of 100 mg/kg/day in male rats and 500 mg/kg/day in female rats. The NOAEL for reproductive effects was 750 mg/kg/day for males and 1,000 mg/kg/day for females (highest dose tested). The NOAEL for neonatal effects was 500 mg/kg/day.

4. *Subchronic toxicity*. Fluroxypyr MHE showed a NOAEL of 1,000 mg/kg/day in a 90–day rat dietary study and a 21–day rabbit dermal study. Ninety–day feeding studies with fluroxypyr showed NOAELs of 80 mg/kg/day (Wistar rats), 700 mg/kg/day (Fischer 344 rats), 1,342 mg/kg/day (male mice), and 1,748 mg/kg/day (female mice). In a 4–week dietary, range finding study with fluroxypyr in dogs, the NOAEL found was >50 mg/kg/day.

5. *Chronic toxicity*. Based on chronic testing with fluroxypyr in the mouse, dog, and rat (two studies), a reference dose (RfD) of 0.8 mg/kg/day is proposed for fluroxypyr and fluroxypyr MHE. The RfD has incorporated a 100-fold safety factor to the NOAEL found in the rat chronic test. NOAELs found in the chronic dietary studies are as follows: 150 mg/kg/day (dog), 300 mg/kg/day (mouse), 80 mg/kg/day (Wistar rats), 100 mg/kg/day (male Fischer 344 rats), and 500 mg/kg/day (female Fischer 344 rats).

6. *Animal metabolism*. Both fluroxypyr and fluroxypyr MHE have been evaluated in rat metabolism studies. In summary, these studies show that fluroxypyr MHE is rapidly hydrolyzed and the fate of the hydrolysis products, fluroxypyr and 1-methylheptanol, are independent of whether they were given as the ester or the acid. Fluroxypyr, *per se*, was extensively absorbed and rapidly excreted principally unchanged in the urine; 1-methylheptanol also was rapidly absorbed and rapidly eliminated. Repeated administration of fluroxypyr MHE was not associated with accumulation in tissues. Also, the metabolism and pharmacokinetics of 1-methylheptanol are comparable to that of the methylheptyl portion of fluroxypyr MHE.

7. *Metabolite toxicology*. Administration of fluroxypyr, as the

acid or methylheptyl ester, in a variety of toxicological studies has produced similar effects. The principal response to sufficiently high dosages, whether administered over the short-term or, in some cases, over a lifetime, was nephrosis. Fluroxypyr is an organic acid that is actively excreted into the urine by the kidney. Thus, the target organ and dose response relationship for fluroxypyr toxicity is entirely consistent with the data on the toxicokinetics of fluroxypyr. Metabolism studies have shown that fluroxypyr MHE is rapidly and completely hydrolyzed to fluroxypyr acid and methylheptanol.

8. *Endocrine disruption*. There is no evidence to suggest that fluroxypyr and fluroxypyr MHE have an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—Acute dietary exposure and risk*. A Tier I acute dietary exposure and risk assessment was conducted. Potential dietary exposure and risk was estimated using DEEM™ software (Dietary Exposure Evaluation Model, Version 7.075, Novigen Sciences, Inc., Washington, DC). A deterministic analysis was conducted by combining the distribution of single-day food consumption events with residues assumed at tolerance levels for each commodity to obtain a distribution of exposure. In this report, acute dietary risk was assessed at the 95th percentile of exposure.

i. *Food*. Very conservative assumptions were made in this dietary risk assessment. The dietary exposure assessment was based on all commodities with tolerances for fluroxypyr established at 40 CFR 180.535 together with proposed tolerances for field corn, sweet corn, grain sorghum, and forage grass and hay, including revised tolerances for milk and meat. It was assumed that fluroxypyr residues were present at tolerance or proposed tolerance levels and that 100% of the crops were treated. The USDA food consumption data from 1989–92 were used by DEEM in estimating acute dietary exposure. Acute dietary risk was assessed using an acute RfD of 1.25 mg/kg/day, based on a maternal NOAEL of 125 mg/kg/day from a rat developmental toxicity study and an uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation). There was no indication of increased susceptibility in young animals to prenatal or postnatal exposure to fluroxypyr in the toxicology studies. Therefore, an FQPA additional safety factor for infants and children was not included in this assessment. Acute dietary exposure at the 95th percentile for females 13 to 50 years old is estimated at 0.004939 mg/kg/day, which occupies 0.4% of the acute RfD. Pregnant females are estimated to have acute dietary exposure of 0.006582 mg/kg/day at the 95th percentile, which occupies 0.53% of the acute RfD. Adverse effects are not expected for exposures occupying 100% or less of the RfD. Therefore, acute dietary exposure and risk are well within acceptable levels.

A chronic dietary assessment estimated that dietary exposure would occupy only 0.4% of the RfD for the overall U.S. population and 1.3% of the RfD for children 1 to 6 years of age, the population subgroup estimated to be most highly exposed.

ii. *Drinking water—Acute drinking water exposure and risk*. There are no established Maximum Contaminant Levels for residues of fluroxypyr in drinking water and health advisory levels for fluroxypyr in drinking water have not been established.

Potential drinking water concentrations of fluroxypyr were estimated in ground water and surface water using the Screening Concentration in Ground Water (SCI-GROW) and the Generic Expected Environmental Concentration (GENEEC) models, respectively. Both GENEEC and SCI-GROW are Tier I screening level models that use conservative assumptions. SCI-GROW estimates pesticide concentrations in shallow, highly vulnerable ground water. GENEEC simulates a 1 hectare by 2 meters deep edge of the field farm pond that receives pesticide runoff from a treated 10 hectare field. The estimated concentration of fluroxypyr in ground water according to SCI-GROW is 0.16 µg/L. The estimated peak concentration of fluroxypyr in surface water using GENEEC is 20.88 µg/L.

To calculate the Drinking Water Levels of Concern (DWLOC) for acute exposure relative to an acute toxicity endpoint, the acute dietary exposure (from the DEEM analysis) was subtracted from the acute RfD to obtain the acceptable upper limit of fluroxypyr in drinking water for acute exposure. DWLOCs were then calculated using default values for adult female body weight (60 kg) and water consumption (2 L/day).

The upper-bound estimated fluroxypyr concentration in ground water (0.16 µg/L) and surface water (20.88 µg/L) are substantially below the acute DWLOCs of 37,352 µg/L and 37,303 for females 13 to 50 years old and pregnant females, respectively. Aggregated acute fluroxypyr exposure for pregnant females and females 13 to 50 years old resulting from dietary exposure and upper-bound drinking water exposure is well within acceptable limits of exposure and risk.

The chronic DWLOC for both the overall U.S. population and children 1 to 6 years of age was over 3,000-fold greater than residue levels in surface water or ground water estimated by conservative screening-level models. Therefore, chronic exposure and risk is expected to be well within acceptable levels.

2. *Non-dietary exposure*. The proposed use of fluroxypyr on residential turf presents the potential for non-occupational, non-dietary (or residential) exposure. Transferable foliar residue data from a fluroxypyr study on turf was used instead of default residue values.

Post-application dermal exposure for adults and toddlers was estimated for the day of application (day 0) since the exposure potential is greatest at this time. Transferable residue of fluroxypyr from turf was found to range from 0.03 to 0.74% (used as a high end stimate) of the fluroxypyr applied and to dissipate with a half-life ranging from 1.4 to 2.5 days.

Homeowners may be exposed to fluroxypyr during application to turf and also may have dermal exposure due to post-application activity on the treated turf.

Homeowner exposure during the application of fluroxypyr to turf includes both dermal and inhalation exposure. Surrogate dermal and inhalation exposure data from Pesticide Handlers Exposure Database (PHED V1.1) was used in estimating applicator exposure. The PHED surrogate data used to estimate exposure assumes residential applicator attire to include short pants, short-sleeve shirt, and no gloves. The applicator exposure estimate was based on a broadcast application using a garden hose end sprayer. Applicator dermal and inhalation exposure was estimated to be 0.0986 mg/kg/day and 0.00003 mg/kg/day, respectively.

Adult post-application dermal exposure from treated turf on the day of application was estimated to be 0.0172 mg/kg/day. The combined dermal exposure from application along with post-application activity is 0.1158 mg/kg/day (0.0986 mg/kg/day + 0.0172 mg/kg/day). Oral post-application exposure is not expected for adults and was not included in this assessment. The Margin of Exposure (MOE) for dermal exposure is 8,635 and for inhalation exposure 2,666,667. These MOEs are substantially greater than 100, indicating that risk

from these potential exposures is well within an acceptable level.

Consistent with the scenario described above for the general adult population, female adult homeowners may experience exposure to fluroxypyr during application to turf as well as from post-application exposure. Female applicator dermal and inhalation exposure was estimated to be 0.115 mg/kg/day and 0.00004 mg/kg/day, respectively. Additionally, female adults may also experience post-application dermal exposure from treated turf on the day of application. Post-application dermal exposure for females was estimated to be 0.0201 mg/kg/day. Since dermal absorption is assumed to be 100% and since both dermal and inhalation exposure are being evaluated against the same toxicity endpoint, total potential exposure from fluroxypyr use on turf can be estimated by simply adding the dermal and inhalation exposure. The combined exposure is 0.13514 mg/kg/day (0.115 mg/kg/day + 0.00004 mg/kg/day + 0.0201 mg/kg/day). Using a NOAEL of 125 mg/kg/day, the MOE is calculated to be 925 (125 mg/kg/day / 0.13514 mg/kg/day). The MOE for female adults as a result of potential dermal and inhalation exposure from residential use of fluroxypyr on turf is well above 100, indicating that risk is within acceptable levels.

Golfers may have dermal exposure to fluroxypyr due to post-application activity on the treated turf. Dermal exposure for adult golfers was estimated on the day of treatment (day 0) to provide a high-end estimate of exposure. Exposure was estimated based on a transfer coefficient of 500 cm^2/hr ([1]) and an exposure time of 4 hours. Exposure was estimated to be 0.001186 mg/kg/day. A MOE of 843,170 was calculated based on an assumption of 100% dermal absorption and a NOAEL of 1,000 mg/kg/day. Given a MOE of three orders of magnitude greater than 100, risk is well within acceptable levels.

Potential exposure for female golfers was estimated to be 0.001383 mg/kg/day. A MOE of 90,383 was calculated based on an assumption of 100% dermal absorption and a NOAEL of 125 mg/kg/day. The MOE is substantially greater than 100, indicating that risk is well within acceptable levels.

Toddlers may have exposure due to post-application activity on treated turf. When a pesticide in liquid formulation is applied to turfgrass, toddlers may experience post-application exposure through dermal exposure and also through oral exposure due to hand-to-mouth transfer of pesticide residue, ingestion of treated turfgrass and incidental ingestion of soil from treated areas.

Toddler post-application dermal exposure from treated turf on the day of application was estimated to be 0.0288 mg/kg/day. Oral exposure due to hand-to-mouth transfer of residues was estimated to be 0.0011 mg/kg/day. Oral exposure due to ingestion of treated grass was estimated to be 0.0019 mg/kg/day. Combined oral exposure from hand-to-mouth transfer of residues and ingestion of treated grass is 0.0030 mg/kg/day (0.0011 mg/kg/day + 0.0019 mg/kg/day). The MOE for dermal exposure is 34,722 and oral exposure is 26,667, both of them well above 100, indicating that risk is well within acceptable levels.

Use of fluroxypyr on turf results in potential short-term residential exposure for adults and children. Potential short-term dietary and residential exposures were combined into aggregate MOE values. Potential exposure through drinking water was not included in the aggregate MOEs, but was evaluated in aggregate through use of a DWLOC calculated for short-term exposure. The aggregate MOEs for adults and toddlers ranged from 906 to 29,335, but all were well above 100, indicating an adequate margin of safety. Additionally, the short-term DWLOCs for toddlers and adults were over 3,000-fold greater than potential fluroxypyr residues in drinking water predicted by conservative screening level models. Therefore, aggregate short-term exposure and risk for children and adults is expected to be well within acceptable levels.

D. Cumulative Effects

The potential for cumulative effects of fluroxypyr MHE and fluroxypyr and other substances that have a common mechanism of toxicity is also considered. There is no reliable information to indicate that toxic effects produced by fluroxypyr MHE and fluroxypyr would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of fluroxypyr MHE and fluroxypyr in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Acute dietary exposure for pregnant females to residues of fluroxypyr from current and proposed uses was estimated to occupy 0.53% of the acute RfD, indicating very little risk. Additionally, the acute DWLOC was calculated to be over 1,700 fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models.

Potential dietary and residential exposures were combined into an aggregate MOE value. Those MOEs range from 906 to 29,335. The aggregate MOEs are well above 100, indicating risk is well within acceptable levels. Additionally, the DWLOCs were over 11,000-fold greater than potential fluroxypyr residue in drinking water. Chronic dietary exposure to residues of fluroxypyr from current and proposed uses was estimated to occupy 0.4% of the RfD. The DWLOC was calculated to be over 11,000 fold greater than potential fluroxypyr residue in drinking water.

It is concluded that there is a reasonable certainty that no harm will result to the general U.S. population, pregnant females or developing young from acute aggregate, short-term or chronic aggregate exposures to fluroxypyr residues from current and proposed uses.

2. *Infants and children.* FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for fluroxypyr MHE relative to prenatal and postnatal effects for children is complete. There were no indications of neurotoxicity and developmental toxicity was not observed in the absence of maternal toxicity. It is concluded that there is no indication of increased sensitivity of infants and children relative to adults and that an additional FQPA safety factor is not required.

The acute and short-term exposures were assessed for pregnant females to evaluate the risk for developmental toxicity and it was concluded that there was reasonable certainty of no harm from aggregate acute or short-term exposures resulting from current and proposed uses of fluroxypyr.

Toddlers may experience short-term dermal and oral exposure to fluroxypyr as a result of post-application activities on treated residential turf. Additionally, there is the potential for exposure to fluroxypyr through residue in food and drinking water. Tier I assessments were conducted to develop very conservative estimates of potential exposure through residential, dietary and drinking water pathways.

Potential dietary and residential exposures were combined into an aggregate MOE value. The aggregate MOE was 5,120, well above 100, indicating risk is well within acceptable

levels. Additionally, the DWLOC was over 3,000-fold greater than potential fluroxypyr residue in drinking water.

Chronic dietary exposure to residues of fluroxypyr from current and proposed uses was estimated to occupy 1.3% of the RfD for children 1 to 6 years old, the population subgroup predicted to be most highly exposed. Additionally, the DWLOC was calculated to be over 3,000 fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models.

Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from acute dietary, short-term and chronic aggregate exposures to fluroxypyr residues from current and proposed uses.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fluroxypyr MHE and fluroxypyr on any food or feed crop.

[FR Doc. 03–848 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0356; FRL–7286–4]

Bifenazate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of Bifenazate in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0356, must be received on or before February 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0356. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the

photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0356. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number OPP–2002–0356. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0356.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0356. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as

required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number (IR–4) and Crompton Manufacturing Company, Inc.

PP 3E6517

EPA has received a pesticide petition (3E6517) from the Interregional Research Project Number (IR–4), 681 U.S. Hwy. #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.572 by establishing tolerances for residues of bifenazate, (diazinecarboxylic acid, 2-(4-methoxy-[1,1′-biphenyl]-3-yl),1-methylethylester) in or on the following raw agricultural commodities (RACs): Vegetable, cucurbit, group at 0.6 part per million (ppm); vegetable, fruiting, group at 2.0 ppm; peppermint, tops at 25 ppm; spearmint, tops at 25 ppm; nut, tree, group at 0.2 ppm; almond, hulls at 10 ppm; okra at 2.0 ppm; and pistachio at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Crompton Manufacturing Company, Inc. (formerly Uniroyal Chemical Company), Middlebury, CT 06749.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residues of bifenazate in plants is adequately understood. The major residue in all plant metabolism studies is bifenazate. A minor, but significant metabolite is the diazene D3598, which was found to interconvert readily to/from bifenazate in the plant matrix during the analytical procedure.

2. *Analytical method*. Crompton has developed practical analytical methodology for detecting and measuring residues of bifenazate in or on RACs. As D3598, a significant metabolite, was found to interconvert readily to/from bifenazate, the analytical method was designed to convert all residues of D3598 to the parent compound (bifenazate) for analysis. The method utilizes reversed phase high performance liquid chromotography (HPLC) to separate the bifenazate from matrix derived interferences, and oxidative coulometric electrochemical detection for the identification and quantification of this analyte.

B. Toxicological Profile

1. *Acute toxicity*. Bifenazate technical, acramite-50WS, and floramite SC have low acute oral, dermal, and inhalation toxicity in laboratory animals. The oral lethal dose LD_{50} in rats and mice is greater than 5 grams/kilogram (g/kg) for acramite-50WS and the technical material. The oral LD_{50} of floramite SC is greater than 5 g/kg in males and greater than 2 g/kg in females. The dermal LD_{50} in rats of bifenazate technical and both formulations is greater than 5 g/kg. The inhalation lethal concentration LC_{50} in the rats of bifenazate technical, acramite-50WS and floramite SC was found to be greater than 4.4, 5.2, and 1.8 milligrams/liter (mg/L), respectively. In eye irritation studies, acramite-50WS was a slight irritant, and bifenazate technical was non-irritating. Floramite SC was found to be irritating to the eyes. All 3 products were found to be non-irritating to the skin of rabbits and non-sensitizing on the skin of guinea pigs.

2. *Genotoxicity*. Bifenazate was evaluated and found to be negative in the Ames Reverse Mutation, Mouse Lymphoma, chinese hamster ovary (CHO) chromosome aberration and mouse micronucleus assays.

3. *Reproductive and developmental toxicity*—i. *Rabbit developmental study*. A range-finding study conducted in pregnant New Zealand white rabbits at dosage levels of 125, 250, 500, 750, and 1,000 milligrams/kilogram/day (mg/kg/day) demonstrated maternal toxicity at dosage levels of 500 mg/kg/day and greater and abortions at dosage levels of 250 mg/kg/day and greater. Bifenazate was then administered by oral gavage to pregnant New Zealand white rabbits at dosage levels of 10, 50, and 200 mg/kg/day. No test article related effects were seen at any dose level. The no observable adverse effect level (NOAEL) for maternal and developmental toxicity was greater than 200 mg/kg/day.

ii. *Rat developmental study*. Bifenazate did not produce developmental toxicity when administered by oral gavage to pregnant Sprague-Dawley CD rats at dosage levels of 10, 100, and 500 mg/kg/day. A reduction in maternal body weight gain was seen at dosage levels of 100 and 500 mg/kg/day. Clinical observations at 500 mg/kg/day included red material/staining on body surfaces, pale extremities, and brown discharge. No developmental or teratogenic effects were observed at any dosage level. The NOAEL for maternal toxicity was 10 mg/kg/day and the NOAEL for developmental toxicity was greater than 500 mg/kg/day.

iii. *Rat reproduction study*. Bifenazate showed no effects on reproduction when fed to 2–generations of male and female Sprague-Dawley CD rats at dietary concentrations of 20, 80, and 200 ppm. At a dosage level of 200 ppm there was a reduction in body weight gain in F0 males and females. Food consumption was unaffected. There was a reduction in body weight gain in F1 females at all dosage levels and in F1 males at 80 and 200 ppm in the absence of effects on food consumption. Since the 20 ppm F1 males did not have a significant reduction in body weight gain, this dosage level can be considered a NOAEL for systemic adult toxicity. The reduction in body weight gain in the F1 females at 20 ppm would not be considered biologically significant because no effects were observed on reproductive parameters or in the F2 litter. The reproductive and developmental NOAEL was greater than 200 ppm (10 mg/kg/day).

4. *Subchronic toxicity*—i. *Thirteen–week rat feeding study*. Bifenazate was fed to male and female Sprague Dawley CD rats for 13 weeks at dietary concentrations of 40, 200, and 400 ppm. At dosage levels of 200 and 400 ppm there was a reduction in red blood cell (RBC) count and hemoglobin (Hgb). Food intake was reduced for 200 ppm females and 200 and 400 ppm males. Histopathological effects were seen in the liver, spleen, and adrenal cortex in males and females at 200 and/or 400 pm. The maximum tolerated dose (MTD) was exceeded in females at 200 ppm and in males and females at 400 ppm. The NOAEL for subchronic toxicity in rats was 40 ppm (2 mg/kg/day).

ii. *Neurotoxicity assessment*. No treatment related effects were seen on neuro-behavior in a Standard Functional Observation Battery conducted at weeks 8 and 13 of the rat feeding study. No overt signs of anti-cholinergic activity, and no statistically significant effects on cholinesterase (ChE) activity were seen in rats in a 2–week feeding study at dose levels up to 400 ppm. Plasma, erythrocyte and brain ChE activity were evaluated in male and female rats fed bifenazate-treated diet at 0, 20, 200, or 400 ppm for 2 weeks. All animals survived until study termination and effects were only seen on body weight gain and food

consumption. The NOAEL for cholinergic inhibition was greater than 400 ppm (20 mg/kg/day).

iii. *Thirteen–week dog feeding study.* Bifenazate was fed to male and female Beagle dogs for 13 weeks at dietary concentrations of 40, 400, and 1,000 ppm. At dosage levels of 400 and 1,000 ppm there was a reduction in RBC count, Hgb and hematocrit (HCT). Liver weights were increased at 400 and 1,000 ppm and centrilobular hepatocellular hypertrophy was seen in females at 400 ppm and males and females at 1,000 ppm. The NOAEL for subchronic toxicity in dogs was 40 ppm (1 mg/kg/day).

5. *Chronic toxicity*—i. *Dog chronic feeding study*. Bifenazate was fed to male and female Beagle dogs for 1–year at dietary concentrations of 40, 400, and 1,000 ppm. At dose levels of 400 and 1,000 ppm, there was a reduction in food consumption in males and reduced body weight gain in males and females. There was a reduction in RBC count, Hgb, and HCT and an increase in bilirubin at 400 and 1,000 ppm. Histopathological effects on bone marrow, kidney, and liver were also seen at these dose levels. The NOAEL for chronic toxicity in dogs was 40 ppm (1 mg/kg/day).

ii. *Rat chronic feeding/carcinogenicity study*. Bifenazate was not carcinogenic in rats when fed to male and female Sprague-Dawley CD rats for 2 years at dietary concentrations of 20, 80, and 160 in females or 20, 80, and 200 ppm in males. Body weight gain was reduced in males and females at the high dosage levels. A reduction in RBC count and an increase in splenic pigment were seen in females at 160 ppm, while high dose males exhibited a reduction in total cholesterol and an increase in splenic pigment. At a dose level of 80 ppm there was a reduction in body weight gain, a decrease in RBC count and an increase in splenic pigment in females. There was no increase in tumor incidence in males or females as a result of bifenazate administration. The NOAEL for chronic toxicity in rats was 20 ppm (1 mg/kg/day).

iii. *Mouse carcinogenicity study*. Bifenazate was not carcinogenic when fed to male and female CD–1 mice for 18 months at dietary concentrations of 10, 100, and 175 ppm in females and 10, 100, and 225 ppm in males. Body weight gain was reduced in males and females at the high dose level. A reduction in RBC, total leukocyte and lymphocyte counts was seen in males at 225 ppm. There was no increase in tumor incidence in males or females as a result of bifenazate administration.

6. *Animal metabolism*. In rat, ^{14}C-bifenazate, ^{14}C-phenyl hydrazine carboxylic acid, 2-(4-methoxy-1,1-biphenyl-3-yl)-1-methylethyl ester was extensively metabolized when it was given orally in 2 dose levels low (10 mg/kg), and high (1,000 mg/kg). Although ⅔ of the dosed radioactivity was excreted in the feces, bifenazate depicted a good degree of absorption as indicated from the level of radioactivity in the bile. In the bile radioactivity study, about 70% of the C–14 was collected from the cannulated bile ducts of low dosed rats indicating an active level of absorption and enterohepatic circulation.

7. *Metabolite toxicology*. In a single dose oral toxicity limit test in rats, the oral LD_{50} of the diazene product of bifenazate was estimated to be approximately 5,000 mg/kg. At 2 hours and at 7 days post-dosing, no effects were seen on erythrocyte cholinesterase inhibition (ChEI) in male or female rats. In addition, no effect on plasma ChEI was seen in male rats at 7 days only. Since this effect was seen only in plasma of females at one time point, it is most likely a pseudo-cholinesterase effect without biological significance. In a dermal toxicity screen, the LD_{50} of the diazene was estimated to be >2,000 mg/kg.

8. *Endocrine disruption*. There are no known reported adverse reproductive or developmental effects in domestic animals or wildlife as a result of exposure to this chemical. A standard battery of required toxicity tests have been conducted on bifenazate. No effects were seen in the reproduction or developmental studies to indicate that bifenazate has an effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. Based on dietary, drinking water, and non-occupational exposure assessments, there is reasonable certainty of no harm to the U.S. population, any population subgroup, or infants and children from chronic exposure to bifenazate.

i. *Food*. Chronic dietary exposure was estimated using dietary exposure evaluation model DEEM™ tolerance levels, and 100% crop treated. Processing factors were used for apple and grape juice. The chronic dietary exposure to the U.S. population (total) was estimated as 0.003093 mg/kg bwt/day, and was 30.9% of the reference dose (RfD). Exposure to non-nursing infants, the highest exposed population subgroup, was 0.007238 mg/kg bwt/day (72.4% of the RfD), and exposure to children was 0.006627 mg/kg bwt/day (66.3% of the RfD).

ii. *Drinking water*. The residue of concern in drinking water was determined to be D1989. Chronic estimated environmental concentrations (EECs) of D1989 in surface water and ground water were generated using FIRST and the screening concentration in ground water (SCI-GROW) (1 application at 0.75 lbs active ingredient/acre). The FIRST model generated an EEC of 0.114 part per billion (ppb), whereas, the SCI-GROW model generated an EEC of 0.0119 ppb. These EEC values are much lower than the drinking water levels of concern (LOC) (227 ppb for adults, 27.6 ppb for infants and children). Therefore, exposure to potential residues in drinking water is expected to be negligible.

2. *Non-dietary exposure*. Food uses described in this petition are strictly agricultural, and will not add to any residential non-dietary exposure that may exist.

D. Cumulative Effects

The mechanism/mode of action of bifenazate on the mammalian RBC, which is the target organ in the species tested, remains to be elucidated. The lack of information on bifenazate mode of action precludes an assessment of cumulative effects.

E. Safety Determination

1. *U.S. population*. Based on the toxicology data base and available information on anticipated residues, chronic dietary exposure to the U.S. population (total) was 30.9% of the RfD. Exposure to potential residues in drinking water is expected to be negligible, as drinking water levels of concern (DWLOCs) are substantially higher than modeled acute and long-term EECs. The margin of exposure (MOEs) from the limited potential for short-term exposure from residential uses was >1,000. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to the U.S. population or any population subgroup from exposure to bifenazate.

2. *Infants and children*. The chronic dietary exposure was 72.4% of the RfD for infants, and 66.3% for children. Exposure to potential residues in drinking water is expected to be negligible, as DWLOCs are substantially higher than modeled acute and long-term EECs. The MOEs from the limited potential for short-term exposure from residential uses was >1,000. Based on these assessments, it can be concluded that there is reasonable certainty of no harm to infants and children from exposure to bifenazate.

F. International Tolerances

There are no Codex or other international maxium residue levels (MRLs) on tolerances for the requested uses with the exception of cherries in Japan. In Japan, the following MRLs have been established: Citrus 0.2 and 1.0; apple 2.0; pear 2.0; peach 0.2; cherry 3.0; strawberry 3.0; watermelon 0.2; and tea 2.0. There are no other current MRLs or tolerances for bifenazate.

[FR Doc. 03–850 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0163; FRL–7283–8]

Primisulfuron-methyl; Report of the FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the ''Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for Primisulfuron-methyl.'' EPA has reassessed the 24 tolerances, or legal limits, established for residues of primisulfuron-methyl in/on raw agricultural commodities. These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the FQPA of 1996.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005; e-mail address: *scheltema.christina@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0163. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* To access the TRED document and fact sheet electronically, go directly to the REDs table on the EPA Office of Pesticide Programs web site, at *http://www.epa.gov/pesticides/reregistration/status.htm.* For a complete list of available documents supporting the TRED, see the electronic version of the public docket, which is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments for documents that are open to public comment, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number or chemical name.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. What Action is the Agency Taking?

EPA has assessed the risks associated with current and proposed food uses of primisulfuron-methyl, reassessed 24 existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is announcing the availability of the resulting report of the FQPA Tolerance Reassessment Progress and Risk Management Decision for Primisulfuron-methyl, also known as a TRED.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a tolerance revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances established for residues of primisulfuron-methyl in/on raw agricultural commodities.

The Agency has determined that there are no dietary (food or drinking water) or aggregate risks of concern from the use of primisulfuron-methyl, so mitigation of these risks is not necessary. EPA is able to make the FQPA safety finding for all current and proposed uses of primisulfuorn-methyl. Therefore, 23 existing tolerances for primisulfuron-methyl have been reassessed and remain unchanged, and 1 tolerance on sweet corn will be revoked because current labels prohibit use on sweet corn. Although EPA is considering a petition for a new use on Kentucky bluegrass grown for seed, the Agency has not yet made a decision to register this new use or establish any associated tolerances.

EPA works extensively with affected parties to reach the tolerance reassessment decisions presented in

TREDs. Therefore, the Agency is issuing the primisulfuron-methyl TRED as a final decision without a formal public comment period.

List of Subjects

Environmental protection, Pesticides and pests, Primisulfuron-methyl.

Dated: December 19, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–630 Filed 1–14–03; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Market Access Agreement

AGENCY: Farm Credit Administration (FCA).

ACTION: Notice of Draft Amended and Restated Market Access Agreement; request for comments.

SUMMARY: The FCA is publishing for comment the Draft Amended and Restated Market Access Agreement (Draft Restated MAA) proposed to be entered into by all of the banks of the Farm Credit System (System) and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). This Draft Restated MAA is an update to the original MAA approved by the FCA on August 17, 1994, and published in the **Federal Register** on August 23, 1994 (59 FR 43344). The Draft Restated MAA sets forth the rights and responsibilities of each of the parties when the condition of a bank falls below pre-established financial thresholds.

DATES: The FCA is seeking comments from the public on the Draft Restated MAA and will take into consideration those comments prior to the decision to grant approval. Written comments must be received on or before February 14, 2003.

ADDRESSES: Send us your comments by electronic mail to *''reg-comm@fca.gov''* or through the Pending Regulations section of FCA's Web site, *''www.fca.gov.''* You may also send written comments to Andrew Jacob, Assistant Director, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784. You may review copies of all comments received at FCA's office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Samuel R. Coleman, CFA, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION: System banks and the Funding Corporation entered into the original Market Access Agreement (MAA) on September 1, 1994, to help control the risk of each System bank by outlining each party's respective rights and responsibilities in the event the condition of a System bank fell below certain financial thresholds. As part of the original MAA, System banks and the Funding Corporation agreed to periodic reviews of the terms of the MAA to consider whether any amendments were appropriate. The Draft Restated MAA updates the original MAA and provides for more stringent financial performance requirements on each System bank.

The Draft Restated MAA, consistent with the approach of the original MAA, establishes certain financial thresholds at which conditions are placed on the activities of a bank or a bank's access to participation in Systemwide and consolidated obligations is restricted. The Draft Restated MAA establishes three categories, which are based on each bank's net collateral ratio, permanent capital ratio, and scores under the Contractual Inter-bank Performance Agreement (CIPA is an agreement among the System banks, the Farm Credit System Financial Assistance Corporation, and the Funding Corporation that establishes certain financial performance criteria).

As a bank's financial condition declines, it moves into Category I, then Category II, and finally Category III. When a bank reaches Category I, it is required to provide certain additional information to a committee of bank and Funding Corporation representatives established under the Draft Restated MAA, the Monitoring and Advisory Committee, including information as to how it will improve its financial condition. When a bank reaches Category II, in addition to being required to provide additional information, the bank is limited to joining in the issuance of Systemwide and consolidated obligations only in those amounts necessary for the bank to be able to roll over its maturing debt. When the bank reaches Category III, the bank is precluded from joining in the issuance of Systemwide and consolidated obligations.

The Draft Restated MAA includes provisions that enable a bank in Category II or III to request the opportunity to continue its access to the market. The Agreement also provides that the FCA may override a decision to impose Category III prohibitions on access to the market for a period of 60 days, which may be renewed for an additional 60-day period.

The original MAA continues in effect until the Draft Restated MAA is approved by the necessary parties, including FCA. The FCA is publishing the Draft Restated MAA for comment by any interested member of the public. The FCA will take these comments into consideration prior to the decision to approve the Draft Restated MAA.

Based on the foregoing, the FCA is now seeking public comment on the Draft Restated MAA as set forth below:

AMENDED AND RESTATED MARKET ACCESS AGREEMENT

AMONG

AgAmerica, FCB,

AGFIRST FARM CREDIT BANK,

AgriBank, FCB,

COBANK, ACB,

Farm Credit Bank Of Texas,

Farm Credit

Bank Of Wichita,

Western Farm Credit Bank

AND

Federal Farm Credit Banks Funding Corporation

This AMENDED AND RESTATED MARKET ACCESS AGREEMENT (the ''Restated MAA'') is entered into among AgAmerica, FCB, AgFirst Farm Credit Bank, AgriBank, FCB, CoBank, ACB, the Farm Credit Bank of Texas, the Farm Credit Bank of Wichita, the Western Farm Credit Bank and the Federal Farm Credit Banks Funding Corporation.

WHEREAS, the Banks and the Funding Corporation entered into the Market Access Agreement, dated September 1, 1994 and effective as of November 23, 1994, referred to herein as ''the Agreement,'' for the reasons stated therein; and

WHEREAS, the Agreement provides that the Banks and the Funding Corporation shall review the Agreement and consider whether any amendments to it are appropriate during the years 2000 and 2006 and at such more frequent intervals as the Banks and the Funding Corporation may agree; and

WHEREAS, the Agreement provides that, in connection with such review, the Monitoring and Advisory Committee, referred to herein as the ''Committee,'' shall report to the boards of directors of the Banks and the Funding Corporation on the operation of the Agreement and recommend

any amendments the Committee considers appropriate; and

WHEREAS, the Committee met on October 5–6, 2000, November 30, 2000, November 2, 2001 and January 24, 2002 and recommended certain amendments for presentation to the Banks and the Funding Corporation (''Draft Restated MAA''); and

WHEREAS, the boards of directors of the Banks and of the Funding Corporation approved the Draft Restated MAA in principle; and

WHEREAS, thereafter, the Draft Restated MAA was sent to FCA for approval and to the Insurance Corporation for an expression of support; and

WHEREAS, FCA published the Draft Restated MAA in the **Federal Register** and sought comments thereon; and

WHEREAS, after considering the comments received, FCA approved the Restated MAA [, subject to certain conditions,] and a notice of such approval was published in the **Federal Register**; and

WHEREAS, subsequently the Insurance Corporation expressed its support of the Restated MAA; and

[WHEREAS, the Restated MAA includes further changes adopted to satisfy the conditions to FCA's approval; and]

WHEREAS, the Parties are mindful of FCA's independent authority under Section 5.17(a)(10) of the Act to ensure the safety and soundness of Banks, FCA's independent authority under Sections 4.2 and 4.9 of the Act to approve the terms of specific issuances of Debt Securities, the Insurance Corporation's independent authority under Section 5.61 of the Act to assist troubled Banks, and the Banks' independent obligations under Section 4.3(c) of the Act to maintain necessary collateral levels for Debt Securities; and

WHEREAS, the Banks are entering into this Restated MAA pursuant to, inter alia, Section 4.2(c) and (d) of the Act; and

WHEREAS, the Funding Corporation is prepared to adopt as the ''conditions of participation'' that it understands to be required by Section 4.9(b)(2) of the Act each Bank's compliance with the terms and conditions of this Restated MAA; and

WHEREAS, the Funding Corporation believes the execution and implementation of this Restated MAA will materially accomplish the objectives which it has concluded are appropriate for a market access program under Section 4.9(b)(2) of the Act; and

WHEREAS, prior to the adoption of the Agreement, the Funding Corporation adopted and maintained in place a Market Access and Risk Alert Program designed to fulfill what it understood to be its responsibilities under Section 4.9(b)(2) of the Act with respect to determining ''conditions of participation,'' which Program was discontinued by the Funding Corporation in accordance with the terms of the Agreement; and

WHEREAS, the Funding Corporation is entering into this Restated MAA pursuant to, *inter alia,* Section 4.9(b)(2) of the Act; and

WHEREAS, the Parties believe that the execution and implementation of this Restated MAA will accomplish the objectives intended to be achieved by the Agreement,

NOW THEREFORE, in consideration of the foregoing, the mutual promises and agreements herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE I—CATEGORIES

Section 1.01. *Scorekeeper.* The Scorekeeper, for purposes of this Restated MAA, shall be the same as the Scorekeeper under Section 4.1 of CIPA.

Section 1.02. *CIPA Oversight Body.* The CIPA Oversight Body, for purposes of this Restated MAA, shall be the same as the Oversight Body under Section 6.1 of CIPA.

Section 1.03. *CIPA Scores.* Net Composite Scores and Average Net Composite Scores, for purposes of this Restated MAA, shall be the same as those determined under Article II of CIPA and the Model referred to therein, as in effect on January 1, 1997, and as amended under CIPA or replaced by successor provisions under CIPA in the future, to the extent such future amendments or replacements are by agreement of all the Banks.

Section 1.04. *Net Collateral and Permanent Capital Ratios.* Each Bank shall report to the Scorekeeper within fifteen days after the end of each month its Net Collateral Ratio and Permanent Capital Ratio as of the last day of that month. Should any Bank later correct or revise, or be required to correct or revise, any past financial data in a way that would cause any Net Collateral Ratio or Permanent Capital Ratio previously reported hereunder to have been different, the Bank shall promptly report a revised Ratio to the Scorekeeper. Should the Scorekeeper consider it necessary to verify any Net Collateral Ratio or Permanent Capital Ratio, it shall so report to the Committee, or, if the Committee is not in existence, to the CIPA Oversight Body, and the Committee or the CIPA Oversight Body, as the case may be, may verify the Ratios as it deems appropriate, through reviews of Bank records by its designees (including experts or consultants retained by it) or otherwise. The reporting Bank shall cooperate in any such verification, and the other Banks shall provide such assistance in conducting any such verification as the Committee or the CIPA Oversight Body, as the case may be, may reasonably request.

Section 1.05. *Category I.* A Bank shall be in Category I if it (a) has an Average Net Composite Score of 50.0 or more, but less than 60.0, for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of 45.0 or more, but less than 60.0, for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of 103.00% or more, but less than 104.00%, for the last day of the most recent month, or (d) has a Permanent Capital Ratio of 7.00% or more, but less than 8.00%, for the period ending on the last day of the most recent month.

Section 1.06. *Category II.* A Bank shall be in Category II if it (a) has an Average Net Composite Score of 35.0 or more, but less than 50.0, for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of 30.0 or more, but less than 45.0, for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of 102.00% or more, but less than 103.00%, for the last day of the most recent month, (d) has a Permanent Capital Ratio of 5.00% or more, but less than 7.00%, for the period ending on the last day of the most recent month, or (e) is in Category I and has failed to provide information to the Committee as required by Article III within two Business Days after receipt of written notice from the Committee of such failure.

Section 1.07. *Category III.* A Bank shall be in Category III if it (a) has an Average Net Composite Score of less than 35.0 for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of less than 30.0 for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of less than 102.00% for the last day of the most recent month, (d) has a Permanent Capital Ratio of less than 5.00% for the period ending on the last day of the most recent month, or (e) is in Category II and has failed to provide information to the Committee as required by Article III within two Business Days after receipt of written notice from the Committee of such failure.

Section 1.08. *Highest Category.* If a Bank would come within more than one Category by reason of the various provisions of Sections 1.05 through 1.07, it shall be considered to be in the highest-numbered Category for which it qualifies (*e.g.*, Category III rather than Category II).

Section 1.09. *Notice by Scorekeeper.* Within twenty days of the end of each month, after receiving the reports due under Section 1.04 within fifteen days of the end of the prior month, the Scorekeeper shall provide to all Banks, all Associations discounting with or otherwise receiving funding from a Bank that is in Category I, II or III, FCA, the Insurance Corporation, the Funding Corporation if it is not the Scorekeeper, and either the CIPA Oversight Body or, if it is in existence, the Committee a notice identifying the Banks, if any, that are in Categories I, II and III, or stating that no Banks are in such Categories.

ARTICLE II—THE COMMITTEE

Section 2.01. *Formation.* A Monitoring and Advisory Committee (the ''Committee'') shall be formed at the instance of the CIPA Oversight Body within seven days of the date that it receives a notice from the Scorekeeper under Section 1.09 that any Bank is in Category I, II or III (unless such a Committee is already in existence). The Committee shall remain in existence thereafter for so long as the most recent notice from the Scorekeeper under Section 1.09 indicates that any Bank is in Category I, II or III. If not already in existence, the Committee may also be formed (a) at the instance of the CIPA Oversight Body at any other time, in order to consider a Continued Access Request that has been submitted or is expected to be submitted, (b) for purposes of preparing the reports described in Section 7.05, and (c) as provided for in Section 8.04(b).

Section 2.02. *Composition.* The Committee shall be made up of two representatives of each Bank and two representatives of the Funding Corporation. One of the representatives of each Bank shall be that Bank's representative on the CIPA Oversight Body. The other representative of each Bank shall be an individual designated by the Bank's board of directors, who may be a member of the Bank's board of directors or a senior officer of the Bank, in the discretion of the board. One of the representatives of the Funding Corporation shall be an outside director of the Funding Corporation designated by the Funding Corporation board of directors. The other representative of the Funding Corporation shall be designated by the board of directors of the Funding Corporation from among the members of its board and/or its senior officers. The removal and replacement of the Committee members designated directly by Bank boards of directors and by the Funding Corporation shall be in the sole discretion of each Bank board and of the Funding Corporation, respectively. A replacement for a member of the CIPA Oversight Body shall automatically replace such member on the Committee.

Section 2.03. *Authority and Responsibilities.* The Committee shall have the authority and responsibilities specified in this Article II, in Sections 1.04, 3.01, 3.02, 3.05, 3.06, 4.02, 7.05, 8.04 and 8.08, and in Article VI, and such incidental powers as are necessary and appropriate to effectuating such authority and responsibilities.

Section 2.04. *Meetings.* The initial meeting of the Committee shall be held at the call of the Chairman of the CIPA Oversight Body or a majority of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives). Thereafter, the Committee shall meet at the call of the Chairman of the Committee or a majority of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives). Written notice of each meeting shall be given to each member by the Chairman or his or her designee not less than 48 hours prior to the time of the meeting. A meeting may be held without such notice upon the signing of a waiver of notice by all of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives). A majority of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives) shall constitute a quorum for the conduct of business, *provided*, *however*, that if a quorum cannot be raised after seven days of efforts, the Parties that attend a meeting upon proper notice thereafter shall constitute a quorum. A meeting may be held by a telephone conference arrangement allowing each speaker to be heard by all others in attendance.

Section 2.05. *Action Without a Meeting.* Action may be taken by the Committee without a meeting if each Bank and the Funding Corporation (with each Party acting through at least one of its representatives) consents in writing to consideration of a matter without a meeting and a majority of the Parties entitled to vote on Committee business (with each Party acting through at least one of its representatives) approves the action in writing, which writings shall be kept with the minutes of the Committee.

Section 2.06. *Voting.* Each Bank and the Funding Corporation shall have one vote on Committee business. Voting on Committee business (including recommendations on Continued Access Decisions, but not the ultimate vote on Continued Access Decisions, which is addressed in Article VI) shall be by a simple majority of the Parties entitled to vote on Committee business that are present (physically or by telephone) through at least one representative. If a Bank or the Funding Corporation has two representatives present, they shall agree in casting the vote of the Bank or the Funding Corporation, and if they cannot agree on a particular matter, that Bank or the Funding Corporation shall not cast a vote on that matter, and, in determining the necessary majority (but not in determining a quorum), shall not be counted as a Party entitled to vote on that matter.

Section 2.07. *Officers.* The Committee shall elect from among its members a Chairman, a Vice Chairman, a Secretary and such other officers as it shall from time to time deem appropriate. The Chairman shall chair the meetings of the Committee and have such other duties as the Committee may delegate to him or her. The Vice Chairman shall perform such duties of the Chairman as the Chairman is unable to perform, and shall have such other duties as the Committee may delegate to him or her. The Secretary shall keep the minutes and maintain the minute book of the Committee. Other officers shall have such duties as the Committee may delegate to them.

Section 2.08. *Retention of Staff, Consultants and Experts.* The Committee shall be authorized to retain staff, consultants and experts as it deems necessary and appropriate in its sole discretion.

Section 2.09. *Expenses.* Any compensation of each member of the Committee for time spent on Committee business and for his or her out-of-pocket expenses, such as travel, shall be paid by the Party that designated that member to the Committee or to the CIPA Oversight Body. All other expenses incurred by the Committee shall be borne by the Banks and assessed by the Funding Corporation based on the formula then used by the Funding Corporation to allocate its operating expenses.

Section 2.10. *Custody of Records.* All information received by the Committee pursuant to this Restated MAA, and all Committee minutes, shall be lodged, while not in active use by the Committee, at the Funding Corporation, and shall be deemed records of the Funding Corporation for purposes of FCA examination. The Parties agree that documents in active use by the Committee may also be examined by FCA.

ARTICLE III—PROVISION OF INFORMATION

Section 3.01. *Information To Be Provided By All Banks in Categories I, II and III.* If a Bank is in Category I, II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and if the prior monthly notice by the Scorekeeper did not indicate that the Bank was in any Category, then the Bank shall within thirty days of receipt of the latest notice provide to the Committee: (a) a detailed explanation of the causes of its being in that Category, (b) an action plan to improve its financial situation so that it is no longer in any of the three Categories, (c) a timetable for achieving that result, (d) the materials and information listed in Attachment 1 hereto (in addition to fulfilling the other obligations specified in Attachment 1 hereto) and (e) such other pertinent materials and information as the Committee shall, within seven days of receiving notice from the Scorekeeper, request in writing from the Bank. Such Bank shall summarize, aggregate or analyze data, as well as provide raw data, in such manner as the Committee may request. Such information shall be promptly updated (without any need for a request by the Committee) whenever the facts significantly change, and shall also be updated or supplemented as the Committee so requests in writing of the Bank by such deadlines as the Committee may reasonably specify.

Section 3.02. *Additional Information To Be Provided By Banks in Categories II and III.* If a Bank is in Category II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and if the prior monthly notice by the Scorekeeper did not indicate that the Bank was in Category II or III, then the Bank shall within thirty days of receipt of the latest notice provide to the Committee, in addition to the information required by Section 3.01, the materials and information listed in Attachment 2 hereto (in addition to fulfilling the other obligations specified in Attachment 2 hereto). Such information shall be promptly updated (without any need for a request by the Committee) whenever the facts significantly change, and shall also be updated or supplemented as the Committee so requests in writing of the Bank by such deadlines as the Committee may reasonably specify.

Section 3.03. *Documents or Information Relating to Communications With FCA or the Insurance Corporation.* Notwithstanding Sections 3.01 and 3.02, a Bank shall not disclose to the Committee any communications between the Bank and FCA or the Insurance Corporation, as the case may be, or documents describing such communications, except as consented to by, and subject to such restrictive conditions as may be imposed by, FCA or the Insurance Corporation, as the case may be. However, facts regarding the Bank's condition or plans that pre-existed a communication with FCA or the Insurance Corporation and then were included in such a communication are not barred from disclosure by this section. The Committee shall decide on a case-by-case basis whether to request copies of such communications and documents from FCA or the Insurance Corporation, as the case may be. Each Bank hereby consents to the disclosure of such communications and documents to the Committee if consented to by FCA or the Insurance Corporation, as the case may be. Nothing in this section shall preclude a Bank from making disclosures to the System Disclosure Agent necessary to allow the System Disclosure Agent to comply

with its obligations under the securities laws or other applicable law or regulations with regard to disclosure to investors.

Section 3.04. *Sources of Information; Certification.* Information provided to the Committee under Sections 3.01 and 3.02 shall, to the extent applicable, be data used in the preparation of financial statements in accordance with generally accepted accounting principles, or data used in the preparation of call reports submitted to FCA pursuant to 12 C.F.R. pt. 621, subpt. B, as amended from time to time, or any successor thereto. A Bank shall certify, through its chief executive officer or, if there is no chief executive officer, a senior executive officer, the completeness and accuracy of all information provided to the Committee under Sections 3.01 and 3.02.

Section 3.05. *Failure to Provide Information.* If a Bank fails to provide information to the Committee as and when required under Sections 3.01 and 3.02, and does not correct such failure within two Business Days of receipt of the written notice by the Committee of the failure, then the Committee shall so advise the Scorekeeper.

Section 3.06. *Provision of Information to Banks.* Any information provided to the Committee under Sections 3.01 and 3.02 shall be provided by the Committee to any Bank upon request. A Bank shall not have the right under this Restated MAA to obtain information directly from another Bank.

Section 3.07. *Cessation of Obligations.* A Bank's obligation to provide information to the Committee under Section 3.01 shall cease as soon as the Bank is no longer in Category I, II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09. A Bank's obligation to provide to the Committee information under Section 3.02 shall cease as soon as the Bank is no longer in Category II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09.

ARTICLE IV—RESTRICTIONS ON MARKET ACCESS

Section 4.01. *Final Restrictions.* As of the Effective Date, a Bank in Category II, as indicated in the most recent notice from the Scorekeeper under Section 1.09, (a) shall be permitted to participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt, and (b) shall comply with the Additional Restrictions.

Section 4.02. *Category II Interim Restrictions.* From the day that a Bank receives a notice from the Scorekeeper that it is in Category II until (a) 10 days thereafter, if the Bank does not by that day submit a Continued Access Request to the Committee, or (b) if the Bank does by that day submit a Continued Access Request to the Committee, the seventh day following the day that notice is received that the Request is granted or denied, the Bank (i) may participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt unless the Committee, taking into account the criteria in Section 6.03, shall specifically authorize participation to a greater extent, and (ii) shall comply with the Additional Restrictions. Notwithstanding the foregoing, the Category II Interim Restrictions shall not go into effect if a Continued Access Request has already been granted in anticipation of the formal notice that the Bank is in Category II.

Section 4.03. *FCA Action.* The Final Restrictions and the Category II Interim Restrictions shall go into effect without the need for case-by-case approval by FCA.

Section 4.04. *Cessation of Restrictions.* The Final Restrictions and the Category II Interim Restrictions shall cease as soon as the Bank is no longer in Category II, as indicated in the most recent notice from the Scorekeeper under Section 1.09. The Bank shall continue, however, to be subject to such other obligations under this Restated MAA as may apply to it by reason of its being in another Category.

ARTICLE V—PROHIBITION OF MARKET ACCESS

Section 5.01. *Final Prohibition.* As of the Effective Date, a Bank in Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, (a) shall be prohibited from participating in issues of Debt Securities, and (b) shall comply with the Additional Restrictions.

Section 5.02. *Category III Interim Restrictions.* From the day that a Bank receives a notice from the Scorekeeper that it is in Category III until (a) 25 days thereafter, if the Bank does not by that day submit a Continued Access Request to the Committee, or (b) if the Bank does by that day submit a Continued Access Request to the Committee, the seventh day following the day that notice is received that the Request is granted or denied, the Bank (i) may participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt, and (ii) shall comply with the Additional Restrictions. Notwithstanding the foregoing, the Category III Interim Restrictions shall not go into effect if a Continued Access Request has already been granted in anticipation of the formal notice that the Bank is in Category III.

Section 5.03. *FCA Action.* The Category III Interim Restrictions shall go into effect without the need for case-by-case approval by FCA. The Parties agree that the Final Prohibition shall go into effect without the need for approval by FCA; *provided, however,* that FCA may override the Final Prohibition, for such time period up to 60 days as FCA may specify (or, if FCA does not so specify, for 60 days), by so ordering before the Effective Date, and may renew such an override once only, for such time period up to 60 additional days as FCA may specify (or, if FCA does not so specify, for 60 days), by so ordering before the expiration of the initial override period. If the Final Prohibition is overridden by FCA, the Category III Interim Restrictions shall remain in effect.

Section 5.04. *Cessation of Restrictions.* The Final Prohibition and the Category III Interim Restrictions shall cease as soon as the Bank is no longer in Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09. The Bank shall continue, however, to be subject to such other obligations under this Restated MAA as may apply to it by reason of its being in another Category.

ARTICLE VI—CONTINUED ACCESS DECISIONS

Section 6.01. *Process.* The process for action on Continued Access Requests shall be as follows:

(a) *Submission of Request.* A Bank may submit a Continued Access Request for consideration by the Committee at any time, including (i) prior to formal notice from the Scorekeeper that it is in Category II or III, if the Bank anticipates such notice, and (ii) subsequent to the Effective Date of Final Restrictions or a Final Prohibition.

(b) *Committee Recommendation.* After a review of the Request, the supporting information and any other pertinent information available to the Committee, the Committee shall arrive at a recommendation regarding the Request (including, if the recommendation is to grant the Request, recommendations as to the expiration date of the Continued Access Decision and as to any conditions to be imposed on the Decision). The Funding Corporation, drawing upon its expertise and specialized knowledge, shall provide to the Committee all pertinent information in its possession (and the Banks authorize the Funding Corporation to provide such information to the Committee for its use as provided herein, and, to that limited extent only, waive their right to require the Funding Corporation to maintain the confidentiality of such information). The Committee shall send its recommendation and a statement of the reasons therefore, including a description of any considerations that were expressed for and against the recommendation by members of the Committee during its deliberations, together with the Request, the supporting information, a report of how the members of the Committee voted on the recommendation, a report by the Funding Corporation concerning its position on the recommendation, and any other material information that was considered by the Committee, to all Banks and the Funding Corporation by overnight delivery service within fourteen days after receiving the Request. If the Committee fails to act within such fourteen-day period, the Continued Access Request shall be deemed forwarded to all Banks entitled to vote thereon for their consideration. If the Committee has failed to act, the Funding Corporation shall send to all Banks, within two days following the deadline for Committee action, a report concerning the position of the Funding Corporation on the Continued Access Request.

(c) *Vote on the Request.* The Banks entitled to vote on the Request shall be all Banks other than those in Category II and III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and other than the Bank requesting the Continued Access Decision. Within ten days of receiving the Committee's recommendation and the accompanying materials (or, if the Committee failed to act within fourteen days, within ten days following the fourteenth day), the board of directors of each Bank entitled to vote on

the Request, or its designee, after review of the recommendation, the accompanying materials, the report of the Funding Corporation, and any other pertinent information, shall vote to grant or deny the Request (as modified or supplemented by any recommendations of the Committee as to the expiration date of the Continued Access Decision and as to conditions to be imposed on the Decision), and shall provide written notice of its vote to the Committee. If the Committee has recommended in favor of a Continued Access Decision, the vote of a Bank shall be either to accept or reject the Committee's recommendation, including the recommended expiration date and conditions; if the Committee has recommended against a Continued Access Decision or has failed to act, the vote of a Bank shall be either to grant the Continued Access Request on the terms requested by the requesting Bank, or to deny it. Failure to vote within the ten-day period shall be considered a ''no'' vote. A Continued Access Request shall be granted only upon a 75% Vote within the ten-day period, and shall be considered denied if a 75% Vote is not forthcoming by that day.

(d) *Notice.* The Committee shall promptly provide written notice to the Parties, FCA and the Insurance Corporation of the granting or denial of the Request, and, if the Request was granted, of all the particulars of the Continued Access Decision.

Section 6.02. *Provision of Information to FCA and the Insurance Corporation.* FCA and the Insurance Corporation shall be advised by the Committee of the submission of a Continued Access Request, shall be provided by the Committee with appropriate materials relating to the Request, and shall be advised by the Committee of the recommendation made by the Committee concerning the Request.

Section 6.03. *Criteria.* The Committee, in arriving at its recommendation on a Continued Access Request, and the voting Banks, in voting on a Continued Access Request, shall consider (a) the present financial strength of the Bank in issue, (b) the prospects for financial recovery of the Bank in issue, (c) the probable costs of particular courses of action to the Banks and the Insurance Fund, (d) any intentions expressed by the Insurance Corporation with regard to assisting or working with the Bank in issue, (e) any existing lending commitments and any particular high-quality new lending opportunities of the Bank, (f) seasonal variations in the borrowing needs of the Bank, (g) whether the Bank's independent public accountants have included a Going Concern Qualification in the most recent combined financial statements of the Bank and its constituent Associations, and (h) any other matters deemed pertinent.

Section 6.04. *Expiration Date.* A Continued Access Decision shall have such expiration date as the Committee recommends and is approved by a 75% Vote. If the Committee recommends against or fails to act on a Continued Access Request, and it is subsequently approved by a 75% Vote, the expiration date of the Continued Access Decision shall be the earlier of the date requested by the Bank or 180 days from the date the Request is granted. A Continued Access Decision may be terminated prior to that date, or renewed for an additional term, upon a new recommendation by the Committee and 75% Vote. A Continued Access Decision (including any conditions to which it may be subject) will terminate automatically as soon as the Bank is no longer in the same Category as it was when it requested the Decision, as indicated in the most recent notice from the Scorekeeper under Section 1.09.

Section 6.05. *Conditions.* A Continued Access Decision shall be subject to such conditions as the Committee recommends and are approved by a 75% Vote. If specifically approved by a 75% Vote, administration of the details of the conditions and ongoing refinement of the conditions to take account of changing circumstances can be left to the Committee or such subcommittee as it may establish for that purpose. Among the conditions that may be imposed on a Continued Access Decision are (a) a requirement of remedial action by the Bank, failing which the Continued Access Decision will terminate, (b) a requirement of other appropriate conduct on the part of the Bank (such as compliance with the Additional Restrictions), failing which the Continued Access Decision will terminate, and (c) specific restrictions on continued borrowing by the Bank, such as a provision allowing a Bank in Category II to borrow only for specified types of business in addition to rolling over the principal of maturing debt, or allowing such a Bank only to roll over interest on maturing debt in addition to rolling over the principal of maturing debt, or a provision allowing a Bank in Category III to roll over a portion of its maturing debt. The Committee shall be responsible for monitoring and determining compliance with conditions, and shall promptly advise the Parties of any failure by a Bank to comply with conditions. The Committee's determination with respect to compliance with conditions shall be final, until and unless overturned or modified in arbitration pursuant to Section 7.08.

Section 6.06. *FCA Action.* The Parties agree that a Continued Access Decision shall go into effect without the need for approval by FCA, but that FCA may override the Continued Access Decision, for such time period as FCA may specify (or, if FCA does not so specify, until a new Continued Access Decision is made pursuant to a recommendation of the Committee and a 75% Vote, in which case it is again subject to override by FCA), by so ordering at any time.

Section 6.07. *Notice to FCA of Intent to File Continued Access Request.* A Bank that receives notice that it is in Category III shall advise FCA, within ten days of receiving such notice, whether it intends to file a Continued Access Request.

ARTICLE VII—OTHER

Section 7.01. *Conditions Precedent.* This Restated MAA shall go into effect on January 1, 2003, *provided, however,* that on or before that date each Party has executed a certificate in substantially the form of Attachment 3 hereto that all of the following conditions precedent have been satisfied: (a) the delivery to the Banks of an opinion of Covington & Burling in substantially the form of Attachment 4 hereto, (b) the delivery to the Funding Corporation of an opinion of Sutherland, Asbill & Brennan in substantially the form of Attachment 5 hereto, (c) adoption by each of the Banks and the Funding Corporation of a resolution in substantially the form of Attachment 6 hereto, (d) action by the Insurance Corporation, through its board, expressing its support for this Restated MAA, and (e) action by FCA, through its board, approving this Restated MAA pursuant to Section 4.2(c) and Section 4.2(d) of the Act, and (without necessarily expressing any view as to the proper interpretation of Section 4.9(b)(2) of the Act) approving this Restated MAA pursuant to Section 4.9(b)(2) of the Act insofar as such approval may be required, which action shall (i) indicate that the entry into and compliance with this Restated MAA by the Funding Corporation fully satisfy such obligations as the Funding Corporation may have with respect to establishing ''conditions of participation'' for market access under Section 4.9(b)(2), and (ii) contain no reservations or other conditions or qualifications except for those which may be specifically agreed to by the Funding Corporation's board of directors and the other Parties.

Upon execution of its certificate, each Party shall forward a copy to the Funding Corporation, attn. Kathleen Mullarkey, General Counsel, which shall advise all other Parties when a complete set of certificates is received.

If this Restated MAA becomes effective in accordance with this Section 7.01, the Agreement shall be amended and restated by this Restated MAA as of that date without further action of the Parties. If any term, provision, covenant or restriction of this Restated MAA is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Restated MAA shall remain in full force and effect and shall in no way be affected, impaired or invalidated. If any term, provision, covenant or restriction of this Restated MAA that purports to amend a term, provision, covenant or restriction of the Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, such term, provision, covenant or restriction of the Agreement shall be considered to have continued and to be continuing in full force and effect at all times since this Restated MAA has purported to be in effect. The parties agree that notwithstanding the occurrence of any of the foregoing events they will treat, to the maximum extent permitted by law, all actions theretofore taken pursuant to this Restated MAA as valid and binding actions of the parties.

Section 7.02. *Representations and Warranties.* Each Party represents and warrants to the other Parties that (a) it has duly executed and delivered this Restated MAA, (b) its performance of this Restated MAA in accordance with its terms will not conflict with or result in the breach of or

violation of any of the terms or conditions of, or constitute (or with notice or lapse of time or both constitute) a default under any order, judgment or decree applicable to it, or any instrument, contract or other agreement to which it is a party or by which it is bound, (c) it is duly constituted and validly existing under the laws of the United States, (d) it has the corporate and other authority, and has obtained all necessary approvals, to enter into this Restated MAA and perform all of its obligations hereunder, and (e) its performance of this Restated MAA in accordance with its terms will not conflict with or result in the breach of or violation of any of the terms or conditions of, or constitute (or with notice or lapse of time or both constitute) a default under its charter (with respect to the Party Banks), or its bylaws.

Section 7.03. *Additional Covenants.*

(a) Each Bank agrees to notify the other Parties and the Scorekeeper if, at any time, it anticipates that within the following three months it will come to be in Category I, II or III, or will move from one Category to another.

(b) Whenever a Bank is subject to Final Restrictions, a Final Prohibition, Category II Interim Restrictions, Category III Interim Restrictions, or a Continued Access Decision, the Committee shall promptly so notify the Funding Corporation, and the Funding Corporation shall take all necessary steps to ensure that the Bank participates in issues of Debt Securities only to the extent permitted thereunder. The Funding Corporation may rely on the determination of the Committee as to whether a Bank has complied with a condition to a Continued Access Decision.

(c) Each Bank agrees that it will not at any time that it is in Category I, II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and will not without twelve months' prior notice to all other Banks and the Funding Corporation at any other time, either (i) withdraw, or (ii) modify, in a fashion that would impede the issuance of Debt Securities, the funding resolution it has adopted pursuant to Section 4.4(b) of the Act. Should a violation of this covenant be asserted, and should the Bank deny same, the funding resolution shall be deemed still to be in full effect, without modification, until arbitration of the matter is completed, and each Bank, by entering into this Restated MAA, consents to emergency injunctive relief to enforce this provision. Nothing in this Restated MAA shall be construed to restrict any Party's ability to take the position that a Bank's withdrawal or modification of its funding resolution is not authorized by law.

(d) Each Bank agrees that it will not at any time that it is in Category I, II or III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and will not without twelve months' prior notice to all other Banks and the System Disclosure Agent at any other time, fail to report information to the System Disclosure Agent pursuant to the Disclosure Program for the issuance of Debt Securities and for the System Disclosure Agent to have a reasonable basis for making disclosures pursuant to the Disclosure Program. Should the System Disclosure Agent assert a violation of this covenant, and should the Bank deny same, the Bank shall furnish such information as the System Disclosure Agent shall request until arbitration of the matter is completed, and each Bank, by entering into this Restated MAA, consents to emergency injunctive relief to enforce this provision. Nothing in this Restated MAA shall be construed to restrict the ability of the System Disclosure Agent to comply with its obligations under the securities laws or other applicable law or regulations with regard to disclosure to investors.

(e) Without implying that suit may be brought on any other matter, each Bank and the Funding Corporation specifically agree not to bring suit to challenge this Restated MAA or to challenge any Final Prohibition, Final Restrictions, Category II Interim Restrictions, Category III Interim Restrictions, Continued Access Decision, denial of a Continued Access Request or recommendation of the Committee with respect to a Continued Access Request arrived at in accordance with this Restated MAA. This provision shall not be construed to preclude judicial actions under the U.S. Arbitration Act, 9 U.S.C. '' 1–15, to enforce or vacate arbitration decisions rendered pursuant to Section 7.08, or for an order that arbitration proceed pursuant to Section 7.08.

(f) The Funding Corporation agrees that it will not reinstitute the Market Access and Risk Alert Program, or adopt a similar such program for so long as both (i) this Restated MAA is in effect and (ii) Section 4.9(b)(2) of the Act is not amended in a manner which would require, nor is there any other change in applicable law or regulations which would require, the Funding Corporation to establish ''conditions of participation'' different from those contained in this Restated MAA. Should the condition described in (ii) no longer apply and the Funding Corporation adopt a market access program, this Restated MAA shall be deemed terminated. All Banks reserve the right to argue, if the conditions described in clauses (i) or (ii) of the preceding sentence should no longer apply and the Funding Corporation should adopt such a program, that any such program adopted by the Funding Corporation is contrary to law, either because Section 4.9(b)(2) of the Act does not authorize such a program, or for any other reason, and the entry by any Bank into this Restated MAA shall not be construed as waiving such right.

(g) It is expressly agreed that the Agreement, FCA approval of the Agreement, this Restated MAA and FCA approval hereof do not provide any grounds for challenging FCA or Insurance Corporation actions with respect to the creation of or the conduct of receiverships or conservatorships. Without limiting the preceding statement, each Bank specifically and expressly agrees and acknowledges that it cannot, and agrees that it shall not, attempt to challenge FCA's appointment of a receiver or conservator for itself or any other System institution or FCA's or the Insurance Corporation's actions in the conduct of any receivership or conservatorship (i) on the basis of this Restated MAA or FCA's approval of this Restated MAA; or (ii) on the grounds that Category II Interim Restrictions, Final Restrictions, Category III Interim Restrictions, or Final Prohibitions were or were not imposed, whether by reason of FCA's or the Insurance Corporation's action or inaction or otherwise. The Banks jointly and severally agree that they shall indemnify and hold harmless FCA and the Insurance Corporation against all costs, expenses, and damages, including without limitation, attorneys' fees and litigation costs, resulting from any such challenge by any Party.

Section 7.04. *Termination.* This Restated MAA shall terminate on December 31, 2011, or at an earlier date if so agreed in writing by 75% of all the Banks. Commencing a year before December 31, 2011, the Parties shall meet to consider its extension. Except as provided in Section 7.03(f), it is understood that the termination of this Restated MAA shall not affect any rights and obligations of the Funding Corporation under Section 4.9(b)(2) of the Act.

Section 7.05. *Periodic Review.* During the years 2003, 2006 and 2009, and at such more frequent intervals as the Parties may agree, the Banks and the Funding Corporation, through their boards of directors, shall review this Restated MAA and consider whether any amendments to it are appropriate. In connection with such review, the Committee shall report to the boards on the operation of the Restated MAA and recommend any amendments it considers appropriate.

Section 7.06. *Confidentiality.* The Parties may disclose this Restated MAA and any amendments to it and any actions taken pursuant to this Restated MAA to restrict or prohibit borrowing by a Bank. All other information relating to this Restated MAA shall be kept confidential and shall be used solely for purposes of this Restated MAA, except that, to the extent permitted by applicable law and regulations, such information may be disclosed by (a) the System Disclosure Agent under the Disclosure Program, (b) a Bank, upon coordination of such disclosure with the System Disclosure Agent, as the Bank deems appropriate for purposes of the Bank's disclosures to borrowers or shareholders; (c) a Bank as deemed appropriate for purposes of disclosure to transacting parties (subject, to the extent the Bank reasonably can obtain such agreement, to such a transacting party's agreeing to keep the information confidential) of material information relating to that Bank, or (d) any Party in order to comply with legal or regulatory obligations. Notwithstanding the preceding sentence, the Parties shall make every effort, to the extent consistent with legal requirements, securities disclosure obligations and other business necessities, to preserve the confidentiality of information provided to the Committee by a Bank and designated as ''Proprietary and Confidential.'' Any expert or consultant retained in connection with this Restated MAA shall execute a written undertaking to preserve the confidentiality of any information received in connection with this Restated MAA. Notwithstanding the foregoing, nothing in this Restated MAA shall prevent Parties from disclosing information to FCA or the Insurance Corporation.

Section 7.07. *Amendments.* This Restated MAA may be amended only by the written agreement of all the Parties.

Section 7.08. *Dispute Resolution.* All disputes between or among Parties relating to this Restated MAA shall be submitted to final and binding arbitration pursuant to the U.S. Arbitration Act, 9 U.S.C. '' 1–15, *provided*, however, that any recommendation by the Committee regarding a Continued Access Request (including, if the recommendation is to grant the Request, recommendations as to the expiration date of the Continued Access Decision and as to any conditions to be imposed on the Decision), and any vote by a Bank on a Continued Access Request, shall be final and not subject to arbitration. Arbitrations shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator. An arbitrator shall be selected within fourteen days of the initiation of arbitration by any Party, and the arbitrator shall render a decision within thirty days of his or her selection.

Section 7.09. *Governing Law.* This Restated MAA shall be governed by and construed in accordance with the Federal laws of the United States of America, and, to the extent of the absence of Federal law, in accordance with the laws of the State of New York excluding any conflict of law provisions that would cause the law of any jurisdiction other than New York to be applied; *provided, however,* that in the event of any conflict between the U.S. Arbitration Act and applicable Federal or New York law, the U.S. Arbitration Act shall control.

Section 7.10. *Notices.* Notices under this Restated MAA shall be in writing, shall be sent both by facsimile transmission and by overnight delivery service, and shall be deemed received on the Business Day after they are sent.

Notices shall be addressed as follows unless such address is changed by written notice hereunder:

To AgAmerica, FCB:
AgAmerica, FCB
375 Jackson Street
St. Paul, MN 55101
Attention: President and Chief Executive Officer
Fax: 651–282–8494

To AgFirst Farm Credit Bank:
AgFirst Farm Credit Bank
Farm Credit Bank Building
1401 Hampton Street
Columbia, SC 29201
Attention: President and Chief Executive Officer
Fax: 803–254–1776

To AgriBank, FCB:
AgriBank, FCB
375 Jackson Street
St. Paul, MN 55101
Attention: President and Chief Executive Officer
Fax: 651–282–8494

To CoBank, ACB:
CoBank, ACB
5500 South Quebec Street
Englewood, CO 80111
Attention: President and Chief Executive Officer
Fax: 303–740–4002

To the Farm Credit Bank of Texas:
Farm Credit Bank of Texas
6210 Highway 290 East
Austin, TX 78723
Attention: President and Chief Executive Officer
Fax: 512–465–0775

To Farm Credit Bank of Wichita:
Farm Credit Bank of Wichita
Farm Credit Bank Building
245 North Waco
Wichita, KS 67202
Attention: President and Chief Executive Officer
Fax: 316–266–5126

To Western Farm Credit Bank:
Western Farm Credit Bank
Farm Credit Bank Building
245 North Waco
Wichita, KS 67202
Attention: President and Chief Executive Officer
Fax: 316–266–5126

To Federal Farm Credit Banks Funding Corporation:
Federal Farm Credit Banks Funding Corporation
10 Exchange Place
Suite 1401
Jersey City, NJ 07302
Attention: President and Chief Executive Officer
Fax: 201–200–8109

To the Farm Credit System Insurance Corporation:
Farm Credit System Insurance Corporation
1501 Farm Credit Drive
McLean, Virginia 22102
Attention: Chairman
Fax: 703–790–9088

To the Farm Credit Administration:
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102–5090
Attention: Chairman
Fax: 703–734–5784

To the CIPA Oversight Body:
At such address and fax number as shall be supplied to the Parties from time to time by the Chairman of the CIPA Oversight Body.

To the Committee:
At such address and fax number as shall be supplied by the Committee, which the Committee shall promptly transmit to each Party.

To a Scorekeeper other than the Funding Corporation:
At such address and fax number as shall be supplied by such Scorekeeper, which such Scorekeeper shall promptly transmit to each Party.

Section 7.11. *Headings; Conjunctive/Disjunctive; Singular/Plural.* The headings of any article or section of this Restated MAA are for convenience only and shall not be used to interpret any provision of the Restated MAA. Uses of the conjunctive include the disjunctive, and vice versa, unless the context clearly requires otherwise. Uses of the singular include the plural, and vice versa, unless the context clearly requires otherwise.

Section 7.12. *Successors and Assigns.* Except as provided in the definitions of ''Bank'' and ''Banks'' in Article IX, this Restated MAA shall inure to the benefit of and be binding upon the successors and assigns of the Parties, including entities resulting from the merger or consolidation of one or more Banks.

Section 7.13. *Counterparts.* This Restated MAA, and any document provided for hereunder, may be executed in one or more counterparts.

Section 7.14. *Waiver.* Any provision of this Restated MAA may be waived, but only if such waiver is in writing and is signed by all Parties to this Restated MAA.

Section 7.15. *Entire Agreement.* Except as provisions of CIPA are cited in this Restated MAA (which provisions are expressly incorporated herein by reference), this Restated MAA sets forth the entire agreement of the Parties and supersedes all prior understandings or agreements, oral or written, among the Parties with respect to the subject matter hereof.

Section 7.16. *Relation to CIPA.* This Restated MAA and CIPA are separate agreements, and invalidation of one does not affect the other. Should CIPA be invalidated or terminated, the Parties will take the necessary steps to maintain those aspects of CIPA that are referred to in Sections 1.01, 1.02 and 1.03, and to replace the CIPA Oversight Body for purposes of continued administration of this Restated MAA.

Section 7.17. *Third Parties.* Except as provided in Sections 2.10, 3.03, 7.03(g), 7.21 and 7.22, this Restated MAA is for the benefit of the Parties and their respective successors and assigns, and no rights are intended to be, or are, created hereunder for the benefit of any third party.

Section 7.18. *Time Is Of The Essence.* Time is of the essence in interpreting and performing this Restated MAA.

Section 7.19. *Statutory Collateral Requirement.* Nothing in this Restated MAA shall be construed to permit a Bank to participate in issues of Debt Securities or other obligations if it does not satisfy the collateral requirements of Section 4.3(c) of the Act. For purposes of this Section, ''Bank'' shall include any System bank in conservatorship or receivership.

Section 7.20. *Termination of System Status.* Nothing in this Restated MAA shall be construed to preclude a Bank from terminating its status as a System institution pursuant to Section 7.10 of the Act, or from at that time withdrawing, as from that time forward, the funding resolution it has adopted pursuant to Section 4.4(b) of the Act. A Bank that terminates its System status shall cease to have any rights or obligations under this Restated MAA, except that it shall continue to be subject to Article VIII with respect to claims accruing through the date of such termination of System status.

Section 7.21. *Restrictions Concerning Subsequent Litigation.* It is expressly agreed by the Banks that (a) characterization or categorization of Banks, (b) information furnished to the Committee or other Banks, and (c) discussions or decisions of the Banks or Committee under this Restated MAA shall not be used in any subsequent litigation

challenging FCA's or the Insurance Corporation's action or inaction.

Section 7.22. *Effect of this Agreement.* Neither this Restated MAA nor FCA approval hereof shall in any way restrict or qualify the authority of FCA or the Insurance Corporation to exercise any of the powers, rights, or duties granted by law to FCA or the Insurance Corporation.

ARTICLE VIII—INDEMNIFICATION

Section 8.01. *Definitions.* As used in this Article VIII:

(a) ''Indemnified Party'' means any Bank, the Funding Corporation, the Committee, the Scorekeeper, or any of the past, present or future directors, officers, stockholders, employees or agents of the foregoing.

(b) ''Damages'' means any and all losses, costs, liabilities, damages and expenses, including, without limitation, court costs and reasonable fees and expenses of attorneys expended in investigation, settlement and defense (at the trial and appellate levels and otherwise), which are incurred by an Indemnified Party as a result of or in connection with a claim alleging liability to any non-Party for actions taken pursuant to or in connection with this Restated MAA. Except to the extent otherwise provided in this Article VIII, Damages shall be deemed to have been incurred by reason of a final settlement or the dismissal with prejudice of any such claim, or the issuance of a final nonappealable order by a court of competent jurisdiction which ultimately disposes of such a claim, whether favorably or unfavorably.

Section 8.02. *Indemnity.* To the extent consistent with governing law, the Banks, jointly and severally, shall indemnify and hold harmless each Indemnified Party against and in respect of Damages, *provided, however*, that an Indemnified Party shall not be entitled to indemnification under this Article VIII in connection with conduct of such Indemnified Party constituting gross negligence, willful misconduct, intentional tort or criminal act, or in connection with civil money penalties imposed by FCA. In addition, the Banks, jointly and severally, shall indemnify an Indemnified Party for all costs and expenses (including, without limitation, fees and expenses of attorneys) incurred reasonably and in good faith by an Indemnified Party in connection with the successful enforcement of rights under any provision of this Article VIII.

Section 8.03. *Advancement of Expenses.* The Banks, jointly and severally, shall advance to an Indemnified Party, as and when incurred by the Indemnified Party, all reasonable expenses, court costs and attorneys' fees incurred by such Indemnified Party in defending any proceeding involving a claim against such Indemnified Party based upon or alleging any matter that constitutes, or if sustained would constitute, a matter in respect of which indemnification is provided for in Section 8.02, so long as the Indemnified Party provides the Banks with a written undertaking to repay all amounts so advanced if it is ultimately determined by a court in a final nonappealable order or by agreement of the Banks and the Indemnified Party that the Indemnified Party is not entitled to be indemnified under Section 8.02.

Section 8.04. *Assertion of Claim.*

(a) Promptly after the receipt by an Indemnified Party of notice of the assertion of any claim or the commencement of any action against him, her or it in respect of which indemnity may be sought against the Banks hereunder (an ''Assertion''), such Indemnified Party shall apprise the Banks, through a notice to each of them, of such Assertion. The failure to so notify the Banks shall not relieve the Banks of liability they may have to such Indemnified Party hereunder, except to the extent that failure to give such notice results in material prejudice to the Banks.

(b) Any Bank receiving a notice under paragraph (a) shall forward it to the Committee (which, if not in existence, shall be formed at the instance of such Bank to consider the matter). The Banks, through the Committee, shall be entitled to participate in, and to the extent the Banks, through the Committee, elect in writing on thirty days' notice, to assume, the defense of an Assertion, at their own expense, with counsel chosen by them and satisfactory to the Indemnified Party. Notwithstanding that the Banks, through the Committee, shall have elected by such written notice to assume the defense of any Assertion, such Indemnified Party shall have the right to participate in the investigation and defense thereof, with separate counsel chosen by such Indemnified Party, but in such event the fees and expenses of such separate counsel shall be paid by such Indemnified Party and shall not be subject to indemnification by the Banks unless (i) the Banks, through the Committee, shall have agreed to pay such fees and expenses, (ii) the Banks shall have failed to assume the defense of such Assertion and to employ counsel satisfactory to such Indemnified Party, or (iii) in the reasonable judgment of such Indemnified Party, based upon advice of his, her or its counsel, a conflict of interest may exist between the Banks and such Indemnified Party with respect to such Assertion, in which case, if such Indemnified Party notifies the Banks, through the Committee, that such Indemnified Party elects to employ separate counsel at the Banks' expense, the Banks shall not have the right to assume the defense of such Assertion on behalf of such Indemnified Party. Notwithstanding anything to the contrary in this Article VIII, neither the Banks, through the Committee, nor the Indemnified Party shall settle or compromise any action or consent to the entering of any judgment (x) without the prior written consent of the other, which consent shall not be unreasonably withheld, and (y) without obtaining, as an unconditional term of such settlement, compromise or consent, the delivery by the claimant or plaintiff to such Indemnified Party of a duly executed written release of such Indemnified Party from all liability in respect of such Assertion, which release shall be satisfactory in form and substance to counsel to such Indemnified Party. The Funding Corporation shall not be entitled to vote on actions by the Committee under this paragraph (b) or Section 8.08.

Section 8.05. *Remedies; Survival.* The indemnification, rights and remedies provided to an Indemnified Party under this Article VIII shall be (i) in addition to and not in substitution for any other rights and remedies to which any of the Indemnified Parties may be entitled, under any other agreement with any other Person, or otherwise at law or in equity, and (ii) provided prior to and without regard to any other indemnification available to any Indemnified Party. This Article VIII shall survive the termination of this Restated MAA.

Section 8.06. *No Rights in Third Parties.* This Restated MAA shall not confer upon any Person other than the Indemnified Party any rights or remedies of any nature or kind whatsoever under or by reason of the indemnification provided for in this Article VIII.

Section 8.07. *Subrogation; Insurance.* Upon the payment by the Banks to an Indemnified Party of any amounts for which an Indemnified Party shall be entitled to indemnification under this Article VIII, if the Indemnified Party shall also have the right to recover such amount under any commercial insurance, the Banks shall be subrogated to such rights to the extent of the indemnification actually paid. Where coverage under such commercial insurance may exist, the Indemnified Party shall promptly file and diligently pursue a claim under said insurance. Any amounts paid pursuant to such claim shall be refunded to the Banks to the extent the Banks have provided indemnification payments under this Article VIII, *provided, however,* that recovery under such insurance shall not be deemed a condition precedent to the indemnification obligations of the Banks under this Article VIII.

Section 8.08. *Sharing in Costs.* The Banks shall share in the costs of any indemnification payment hereunder as the Committee shall determine.

ARTICLE IX—DEFINITIONS

The following definitions are used in this Restated MAA:

''Act'' means the Farm Credit Act of 1971, 12 U.S.C. 2001, *et seq.*, as amended from time to time, or any successors thereto.

The ''Additional Restrictions'' are that a Bank (a) shall manage its asset/liability mix so as not to increase, and, to the extent possible, so as to reduce or eliminate, any Interest-Rate Sensitivity Deduction in its Net Composite Score, and (b) shall not increase the dollar amount of any liabilities, or take any action giving rise to a lien or pledge on its assets, senior to its liability on Debt Securities other than (i) tax liabilities and secured liabilities arising in the ordinary course of business through activities other than borrowing, such as mechanic's liens or judgment liens, and (ii) secured liabilities, or an action giving rise to such a lien or pledge, incurred in the ordinary course of business as the result of issuing secured debt or entering into repurchase agreements, *provided, however,* that such debt issuances and agreements may be undertaken to the extent that the proceeds therefrom are used to repay the principal of outstanding Debt Securities and the value of the collateral securing the debt issuances or the agreements

(computed in the same manner as provided under Section 4.3(c) of the Act) does not exceed the amount of principal so repaid.

''Agreement'' means that certain Market Access Agreement, dated September 1, 1994 and effective as of November 23, 1994, among the Banks and the Funding Corporation.

''Associations'' means agricultural credit associations, federal land bank associations, federal land credit associations and production credit associations.

''Average Net Composite Score'' is defined in Section 1.03.

''Bank'' means a bank of the Farm Credit System, other than (except where noted) any bank in conservatorship or receivership.

''Banks'' means the banks of the Farm Credit System, other than (except where noted) any banks in conservatorship or receivership.

''Business Day'' means any day other than a Saturday, Sunday or Federal holiday.

''Business Plan'' means the business plan required under 12 C.F.R. 618.8440, as amended from time to time, or any successors thereto.

''CIPA'' means that certain Amended and Restated Contractual Interbank Performance Agreement Among the Banks of the Farm Credit System, the Farm Credit System Financial Assistance Corporation and the Federal Farm Credit Banks Funding Corporation, the Scorekeeper, Dated as of January 1, 1997, as amended from time to time, or any successor thereto.

''CIPA Oversight Body'' is defined in Section 1.02.

''Category I'' is defined in Section 1.05.

''Category II'' is defined in Section 1.06.

''Category II Interim Restrictions'' means the requirements set forth in Section 4.02.

''Category III'' is defined in Section 1.07.

''Category III Interim Restrictions'' means the requirements set forth in Section 5.02.

''Collateral'' is defined as in Section 4.3(c) of the Act and the regulations thereunder, as amended from time to time, or any successors thereto.

''Collateralized Obligations'' means obligations required by Section 4.3(c) of the Act to be backed by collateral as set forth therein.

The ''Committee'' is defined in Section 2.01.

''Continued Access Decision'' means a decision, subject to the procedures, terms and conditions described in Article VI, that Final Restrictions or a Final Prohibition not go into effect, or be lifted.

''Continued Access Request'' means a request for a Continued Access Decision.

''Days'' means calendar days, unless the term Business Days is used.

''Debt Securities'' means Systemwide and consolidated obligations issued through the Funding Corporation, within the meaning of Sections 4.2(c), 4.2(d) and 4.9 of the Act.

''Disclosure Program'' means the program established, pursuant to resolutions of the Banks and the Funding Corporation adopted in 1987 and last substantively revised in 1994, for disclosure at the Systemwide level of financial and other information in connection with the issuance of Debt Securities, as amended from time to time, or any successor thereto.

The ''Effective Date'' is (a) the tenth day after a Bank receives a notification from the Scorekeeper that it is in Category II or the twenty-fifth day after a Bank receives a notification from the Scorekeeper that it is in Category III, in each case if the Bank does not by that day submit a Continued Access Request to the Committee, or (b) if the Bank does by that day submit a Continued Access Request to the Committee, the seventh day following the day that notice is received that the Request is denied.

''FCA'' means the Farm Credit Administration.

''Final Prohibition'' means the requirements set forth in Section 5.01.

''Final Restrictions'' means the requirements set forth in Section 4.01.

''Funding Corporation'' means the Federal Farm Credit Banks Funding Corporation.

''Going Concern Qualification'' means a qualification expressed pursuant to Statement of Auditing Standards No. 59, ''The Auditor's Consideration of an Entity's Ability to Continue As a Going Concern.''

''Insurance Corporation'' means the Farm Credit System Insurance Corporation.

''Insurance Fund'' means the Farm Credit Insurance Fund maintained by the Insurance Corporation pursuant to Section 5.60 of the Act.

''Interest-Rate Sensitivity Deduction'' is defined as in Article II of CIPA, and the Model referred to therein, as amended from time to time, or any successor thereto.

''Liquidity Deficiency Deduction'' is defined as in Article II of CIPA, and the Model referred to therein, as amended from time to time, or any successor thereto.

''Net Collateral'' means a Bank's collateral as defined in 12 C.F.R. 615.5050, as amended from time to time, or any successors thereto (except that eligible investments as described in 12 C.F.R. 615.5140, as amended from time to time, or any successors thereto, are to be valued at their amortized cost), less an amount equal to that portion of the allocated investments of affiliated Associations that is not counted as permanent capital by the Bank.

''Net Collateral Ratio'' means a Bank's Net Collateral divided by Bank-only total liabilities (i.e., the total liabilities used to compute the net collateral ratio defined in 12 C.F.R. 615.5301(d), as amended from time to time or any successors thereto).

''Net Composite Score'' is defined in Section 1.03.

''Parties'' means the parties to this Restated MAA. A bank in conservatorship or receivership is not a party to this Restated MAA.

''Permanent Capital'' is defined as in Section 4.3A(a)(1) of the Act and the regulations thereunder, as amended from time to time, or any successors thereto.

''Permanent Capital Ratio'' means a Bank's Permanent Capital as a percentage of its Risk-Adjusted Asset Base.

''Person'' means any human being, partnership, association, joint venture, corporation, legal representative or trust, or any other entity.

''Risk-Adjusted Asset Base'' is defined as in 12 C.F.R. 615.5210(e), as amended from time to time, or any successor thereto.

''Scorekeeper'' is defined in Section 1.01.

''75% Vote'' means an affirmative vote, through each voting Bank's board of directors or its designee, of at least 75% of those Banks that are entitled to vote on a matter.

''System'' means the Farm Credit System.

''System Disclosure Agent'' means the Funding Corporation or such other disclosure agent as all Banks shall unanimously agree upon, to the extent permitted by law or regulation. For purposes of this definition, ''Banks'' shall include any System bank in conservatorship or receivership.''

Dated: January 9, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–800 Filed 1–14–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 8, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 17, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 60 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 6,200 hours.

Total Annual Cost: N/A.

Needs and Uses: 47 U.S.C. 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. In an Order, the Commission concludes that petitions for designation filed under section 214(e)(6) relating to ''near reservation'' areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking ETC designation in such areas must follow the procedures set forth in the Twelfth Report and Order for non-tribal lands prior to submitting a request for designation to this Commission under section 214(e)(6).

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No.: FCC Forms 499–A and 499–Q.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,500 respondents, 15,500 responses.

Estimated Time Per Response: 30 hours.

Frequency of Response: On occasion, annual, quarterly, one-time and other reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 164,487 hours.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission modified the existing methodology used to assess contributions that carriers make to the federal universal service support mechanisms. The modifications adopted will entail altering to the current revenue reporting requirements to which interstate telecommunications carriers are subject under part 54 of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–766 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 6, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 14, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0718.

Title: Part 101 Governing the Terrestrial Microwave Radio Service.

Form No: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 20,025 respondents; (1,025 reporting responses and 19,000 recordkeepers).

Estimated Time Per Response: 20,489 hours.

Frequency of Response: On occasion and every 10 reporting requirements and recordkeeping requirement.

Total Annual Burden: 20,489 hours.

Total Annual Cost: $91,000.

Needs and Uses: Part 101 requires various information to be filed and maintained by the respondent to determine the technical, legal and other qualifications of applications to operate a station in the public and private operational fixed services. The information is also used to determine whether the public interest, convenience and necessity are being served as required by 47 U.S.C. 309. The Commission staff also uses this information to ensure that applicants and licensees comply with ownership and transfer restrictions imposed by section 310 of the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–765 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–3606]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the rechartering of the Consumer Advisory Committee, formerly known as the Consumer/Disability Telecommunications Advisory Committee (hereinafter ''the Committee''), whose purpose is to make recommendations to the Federal Communications Commission (''FCC'' or ''Commission'') regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in rural areas) in proceedings before the Commission. The Commission also requests applications for membership on the Committee.

DATES: Applications should be received no later than January 31, 2003.

ADDRESSES: Applications should be sent to the Federal Communications Commission, Consumer & Governmental Affairs Bureau, Attn.: Scott Marshall, via e-mail to *cac@fcc.gov*, via facsimile to 202–418–6509 or via U.S. Mail, to 445 12th Street, SW., Room 5A824, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202–418–2809 (voice), 202–418–0179 (TTY), or e-mail *smarshal@fcc.gov.*

SUPPLEMENTARY INFORMATION: A public notice, which announced the rechartering of the Consumer Advisory Committee (formerly known as the Consumer/Disability Telecommunications Advisory Committee), was released on December 31, 2002.

Electronic Access and Filing

A copy of this notice also is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. The notice also is posted on the Commission's Web site at *www.fcc.gov/cgb/cac.* Applications for membership on the Committee may be sent to the Commission via email addressed to Consumer & Governmental Affairs Bureau, Attn.: Scott Marshall, *cac@fcc.gov*, may be transmitted via facsimile to 202–418–6509, or may be sent via U.S. mail to 445 12th Street, SW., Room 5A824, Washington, DC 20554.

Background

The establishment of the Committee was announced by public notice dated November 30, 2000, 15 FCC Rcd 23798, as published in the **Federal Register** (65 FR 76265, December 6, 2000). On November 20, 2002, the initial Charter of the Committee terminated. The Charter was renewed for another two year term, and the name of the Committee was changed to the Consumer Advisory Committee to better reflect its mandate and activities. The Committee is organized under, and will operate in accordance with, the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1988).

The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in rural areas) in proceedings before the Commission.

Each meeting of the full Committee will be open to the public. A notice of each meeting will be published in the **Federal Register** at least 15 days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection.

Functions of the Committee

The topics to be addressed by the Committee will include, but are not limited to, the following areas:

- Consumer protection and education (*e.g.*, cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations, such as Native Americans and persons living in rural areas).
- Access by people with disabilities (*e.g.*, telecommunications relay services, closed captioning, accessible billing and access to telecommunications products and services).
- Impact upon consumers of new and emerging technologies (*e.g.*, availability of broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies).
- Implementation of Commission rules and consumer participation in the FCC rulemaking process.

During calendar year 2003, it is anticipated that the Committee will meet in Washington, DC for three one-day meetings on April 11, June 27, and November 14. In addition, as needed, working groups will be established to facilitate the Committee's work between meetings of the full Committee. Meetings will be fully accessible to individuals with disabilities.

Membership

The Commission seeks applications from interested organizations, from both the public and private sectors, that wish to be considered for membership on the Committee. Selections will be made on the basis of factors such as expertise and diversity of viewpoints that are necessary to address effectively the questions before the Committee. Applicants should be recognized experts in their fields, including, but not limited to, consumer advocacy, disabilities, underserved populations (*e.g.*, persons living in rural areas and tribal communities), telecommunications infra-structure and equipment, telecommunications services (including wireless), and broadcast/cable services. The number of Committee members will be established to effectively accomplish the Committee's work. Organizations with similar interests are encouraged to nominate one person to represent their interests.

Members must be willing to commit to a 2-year term of service, should be willing and able to attend three 1-day meetings per year in Washington, DC, and are also expected to participate in deliberations of at least one working group. The Commission is unable to pay *per diem* or travel costs.

Applications for Membership/ Deadline

Applications should be received by the Commission no later than January 31, 2003, and should be sent to the Federal Communications Commission, Consumer & Governmental Affairs Bureau, Attn.: Scott Marshall, via e-mail to *cac@fcc.gov,* via facsimile to 202–418–6509 or via U.S. mail to 445 12th Street, SW., Room 5A824, Washington, DC 20554.

Due to the extensive security screening of incoming mail since September 11, 2001, delivery of mail sent to the FCC may be delayed. Therefore, we encourage submission by email or fax. If an application is sent via U.S. mail, we encourage applicants to follow up with a phone call to Scott Marshall, 202–418–2809, or 202–418–0179 (TTY), to confirm receipt. A specified application form is not required. However, applications should include the name of the organization, the representative's name, the name of an alternate representative, title, address

and telephone number, a statement of the interests represented and the issues of interest to the applicant, and a detailed description of the applicant's knowledge and qualifications to serve on the Committee. The application should further be supported by a statement indicating a willingness to serve on the Committee for a 2 year period of time; a commitment to attend three 1-day meetings per year in Washington, DC at the applicant's own expense; and a commitment to work on at least one working group. Members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission.

After the applications have been reviewed, the Commission will publish a notice in the **Federal Register** announcing the appointment of the Committee members and the first meeting date of the Committee. It is anticipated that the first Committee meeting will take place on April 11, 2003.

Federal Communications Commission.

K. Dane Snowden,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–814 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–3371]

Wireless Telecommunications Bureau Seeks To Verify ITFS, MDS, and MMDS License Status and Pending Applications; Requests for Extension of Response Date Filed by Troutman Sanders LLP and the Wireless Communications Association International/The National ITFS Association

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (FCC) extends the time until February 3, 2003 for all Instructional Television Fixed Service, Multipoint Distribution Service, and Multichannel Multipoint Distribution Service licensees to respond to the October 18, 2002 *Public Notice* requiring all Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively, the ''Services'') licensees and applicants to verify licensing information and associated technical data, and submit required corrections.

FOR FURTHER INFORMATION CONTACT: Legal Matters: contact John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, at (202) 418–0680.

For all questions regarding data corrections, and how to file those corrections, contact the Licensing Support Hotline at 1–888–225–5322 and select option 2.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, DA 02–3371, released on December 5, 2002. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. On October 18, 2002, 67 FR 69010, November 14, 2002, the Wireless Telecommunications Bureau (WTB or Bureau) required all Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively, the ''Services'') licensees and applicants in the Services to review licensing information and associated technical data. Specifically, licensees and applicants in the Services were required to verify the available information concerning their licenses and applications, make any necessary corrections concerning that data, and, under certain circumstances, submit corrections or responses to that data by December 17, 2002.

2. On November 25, 2002, the law firm of Troutman Sanders LLP requested a sixty-day extension of time, on behalf of several wireless cable clients, to comply with the *BLS License Inventory Public Notice*. On November 27, 2002, the Wireless Communications Association International and the National ITFS Association (WCA/NIA) jointly filed a similar request. For the reasons stated below, the FCC grants the requests in part and extends the time to respond to the *BLS License Inventory Public Notice* until February 3, 2003.

3. In their requests, Troutman Sanders and WCA/NIA argue that the process of reviewing the FCC's licensing records regarding the Services and preparing corrections is taking far longer than the Bureau anticipated because the vast majority of records require corrections or additional information. WCA/NIA assert that there are a limited number of people with the necessary experience with the MDS and ITFS licensing processes to evaluate the FCC's licensing records, determine whether corrections are needed, and prepare the necessary changes. WCA/NIA also represent that many ITFS licensees will be closed from the middle of December through the middle of January because of the holiday season.

4. Although the FCC does not routinely grant extensions of time, the importance of ensuring that the FCC's licensing records are accurate, and the challenges that licensees and applicants in the Services are facing, indicate that an extension of the December 17, 2002 deadline is appropriate. The FCC does not believe, however, that a sixty-day extension is warranted. In this connection, the FCC notes that electronic application filing has been suspended in the Services. The FCC is concerned that delays in the verification of licensing data and submission of corrections could unduly hinder the Bureau's efforts towards developing accurate licensing records and resuming electronic filing in the Services in an expeditious and efficient manner. Based upon the record before us, the FCC believes the current extension of time would be sufficient to allow licensees and applicants to respond to the *BLS License Inventory Public Notice* and provide any needed corrections. The February 3, 2003 date is beyond the mid-December to mid-January timeframe in which WCA/NIA identified that many ITFS licensees are closed for business. As a result of this extension, licensees and applicants in the Services will have had over 100 days to review the FCC's licensing records and prepare any necessary corrections and responses.

I. Ordering Clauses

5. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.46 of the FCC's rules, 47 CFR 1.46, that the requests filed by Troutman Sanders LLP on November 24, 2002 and by the Wireless Communications Association International and the National ITFS Association on November 27, 2002 are granted to the extent stated herein and are otherwise denied in all other respects.

6. Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.46 of the FCC's rules, 47 CFR 1.46, and that the time for licensees and applicants to respond to the *BLS License Inventory Public Notice* is extended until February 3, 2003.

7. This action is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the FCC's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–811 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–3372]

Clarifies Public Notice Relating to Verification of ITFS, MDS, and MMDS License Status and Pending Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document clarifies two issues relating to a Federal Communications Commission (FCC) Public Notice released on October 18, 2002 requiring all Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively, the ''Services'') licensees and applicants to review licensing information and associated technical data.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Legal Matters: contact John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, at (202) 418–0680.

For all questions regarding data corrections, and how to file those corrections, contact the Licensing Support Hotline at 1–888–225–5322 and select option 2.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Public Notice,* DA 02–3372, released on December 5, 2002. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.* Licensees and applicants should visit *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html* in order to review the tables. For all questions regarding technical aspects of public access to BLS data, contact the FCC Technical Support Hotline: Call 202–414–1250 (TTY 202–414–1255) or e-mail to *ulscomm@fcc.gov.* The hotline is available Monday through Friday 8 a.m. to 6 p.m. Eastern Time. All calls to the hotline are recorded.

On October 18, 2002, 67 FR 69529, November 18, 2002, the Wireless Telecommunications Bureau (WTB) issued a public notice requiring all Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS) (collectively, the ''Services'') licensees and applicants to review licensing information and associated technical data. Licensees and applicants are required to verify the available information concerning their licenses and applications, make any necessary corrections concerning that data, and, under certain circumstances, submit corrections or responses to that data by February 3, 2003. By this public notice, WTB clarifies two issues relating to the *BLS License Inventory Public Notice.*

First, with respect to licenses in the Services, if a licensee believes that all information pertaining to a license (including both the license tables and the additional technical information available at *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html)* is accurate, the licensee is not required to submit a response with respect to that license. With respect to pending applications filed prior to March 25, 2002, however, a response is required even if all the information relating to that pending application is correct. Specifically, the applicant must: (1) affirm, in writing, within sixty days of the release of this public notice, that continued processing of the application is requested, by contacting the FCC at the addresses listed below, and (2) submit a copy of the application with the written affirmation request.

If the information requested is being sent via United States Postal Service, licensees and applicants must use the following address: Federal Communications Commission, MDS/ITFS Database Corrections, 1270 Fairfield Road, Gettysburg, PA 17325.

Correspondence sent by overnight mail couriers (*e.g.*, Federal Express, United Parcel Service, Airborne), hand-delivery or messenger must be addressed to: Federal Communications Commission, MDS/ITFS Database Corrections, 1120 Fairfield Road, Gettysburg, PA 17325.

Second, ITFS licensees and applicants are not required to verify data relating to receive sites. The FCC notes that ITFS licensees are currently prohibited from registering new receive sites. Moreover, while receive sites registered prior to September 17, 1998 are still entitled to interference protection, most such receive sites receive protection because they are located within the thirty-five mile protected service area of the ITFS station. Under those circumstances, and given the fact that many ITFS stations have a large number of registered receive sites, the FCC concludes that it would be unduly burdensome to require ITFS licensees to verify data relating to receive sites at this time. The FCC encourages ITFS licensees with grandfathered receive sites outside the thirty-five mile protected service area to review the data relating to receive sites and to submit corrections if the data does not accurately reflect the receive site, as registered with the FCC on September 17, 1998. The FCC nonetheless note that the prohibition on registering new ITFS receive sites remains in effect.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–813 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice; altered Privacy Act system of records; revision of one routine use; addition of one new routine use; and cancellation of one system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (e)(4) and (e)(11), the

Federal Communications Commission (FCC or Commission) proposes to alter a system of records, FCC/Central-6, ''Personnel Investigation Records.'' The altered system of records will incorporate the provisions of FCC/OMD–4, ''Security Office Control Files,'' including the addition of two routine uses from FCC/OMD–4; revision of one routine use; and addition of one new routine use incorporating the data elements and uses for the Workplace Violence Form; and make other edits and revisions as necessary. The FCC will cancel FCC/OMB–4.

DATES: In accordance with 5 U.S.C. 552a (e)(4) and (e)(11), any interested person may submit written comments concerning the proposed altered system of records on or before February 14, 2003. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system may submit comments on or before February 24, 2003. The proposed system shall become effective without further notice February 24, 2003 unless the FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, the FCC has submitted reports on this proposed altered system to OMB and both Houses of Congress.

ADDRESSES: Comments should be sent to Les Smith, Privacy Act Clerk, Performance Evaluation and Records Management (PERM), Room 1–A804, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *lesmith@fcc.gov*.

FOR FURTHER INFORMATION: Contact Les Smith, Performance Evaluation and Records Management (PERM), Room 1–A804, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *lesmith@fcc.gov*; or Eric Botker, Security Office, Associate Managing Director-Administrative Operations (AMD–AO), Security Operations Center, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554, (202) 418–7884 or via the Internet at *ebotker@fcc.gov*.

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a (e)(4) and (e)(11), this document sets forth notice of the proposed altered system of records maintained by the FCC; addition of two routine uses to FCC/Central-6 that were formerly in FCC/OMD–4; revision of one routine use in FCC/Central-6 to incorporate elements formerly in FCC/OMD–4; addition of one new routine use to incorporate uses in the Workplace Violence Form; and cancellation of one system of records, FCC/OMD–4. This agency previously gave complete notice of the two systems of records covered under this Notice by publication in the **Federal Register** on October 23, 2000, 65 FR 63468. This notice is a summary of more detailed information, which may be viewed at the location given in the **ADDRESSES** section above. The purposes for altering FCC/Central-6, ''Personnel Investigation Records'' are to merge FCC/OMD–4, ''Security Office Control Files'' into this system of records to eliminate possible duplications of functions and records; to add new data elements, new purposes, and one new routine use; to update the statutory authority to maintain the information that the Commission may collect when the Workplace Violence Form is introduced; and otherwise to alter, update, and revise this system of records as necessary.

The FCC proposes to achieve these purposes by altering this system of records, FCC/Central-6, ''Personnel Investigation Records with these changes:

The incorporation of the data elements of another system of records, FCC/OMD–4, ''Security Office Control Files,'' into FCC/Central-6;

The elimination of FCC/OMD–4;

The transfer of two routine uses formerly in FCC/OMD–4 to address new and/or revised uses:

Routine use (7) allows disclosure to the security officers of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to their request(s) for verification of security clearances of FCC employees to have access to classified data or areas where their official duties require such access.

Routine use (8) allows disclosure to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant or pertinent enforcement information or records, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a grant or other benefit.

The revision of one routine use to incorporate uses formerly in FCC/OMD–4:

Routine use (5) allows disclosure to designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, in response to their request, when such agency, office, or establishment conducts an investigation of the individual for the purpose of hiring, firing, or retention, granting a security clearance, making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or classifying jobs, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's purpose.

The addition of one new routine use to include the data elements, information, and purposes for the Workplace Violence Form:

Routine use (9) allows disclosure to the Merit System Protection Board (MSPB) during the course of the MSPB's investigation of the individual's appeal, following the Commission's adverse action against the individual.

The alteration, revision, or modification of various data elements in FCC/Central-6, including editorial changes to update, simplify, or clarify, as necessary, this system of records.

The FCC Security Officer and the Personnel Security Specialist in the Security Office will use the records in FCC/Central-6 to provide investigative information to determine compliance with Federal regulations and/or an individual's suitability and fitness for Federal employment, access to classified information or restricted areas, position sensitivity, security clearances, evaluations of qualifications, and loyalty to the U.S; to evaluate qualifications and suitability to perform contractual services for the U.S. Government; to document such determinations; to respond to an inquiry conducted under the President's Program to Eliminate Waste and Fraud in the Government; to take action on, or respond to a complaint about a threat, harassment, intimidation, violence, or other inappropriate behavior involving one or more FCC employees and/or contract employees; and to counsel employees.

Records in this system will be available for public inspection at the location given above. The functions in this system of records will be performed by the FCC Security Officer and the Personnel Security Specialist in the Security Office.

This notice meets the requirement documenting the change in the Commission's system of records, and provides the public, Congress, and the Office of Management and Budget (OMB) an opportunity to comment.

FCC/Central-6

SYSTEM NAME:

Personal Investigation Records.

SECURITY CLASSIFICATION:

There is no specific security classification for this system; however, data or records within the system may have national defense/foreign policy classifications up through secret.

SYSTEN LOCATION:

Security Operations Center, Assistant Managing Director-Administrative Offices (AMD–AO), Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former FCC employees, applicants for employment in the Federal service, and contractors.

2. Individuals considered for access to classified information or restricted areas and/or security determinations such as contractors, experts, instructors, and consultants to Federal programs.

3. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Data needed to identify an individual and his/her security clearance for both FCC and contract employees: individual's last, first, and middle names (filed alphabetically by last name); Social Security Number; date of birth; place of birth; Bureau/Office/Contractor Company; position title; security classification; types and dates of investigations; agency conducting investigation, investigation dates, clearance level granted, and position sensitivity level; and remarks.

2. Data needed to investigate an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc; reports about the individual's qualifications for a position; reports of inquiries with law enforcement agencies, employers, and educational institutions attended; reports of action after OPM or FBI section 8(d) Full Field Investigation; Notices of Security Investigation and other information developed from the above described Certificates of Clearance; and in some instances, a photograph of the subject.

3. Data to needed to investigate allegations of misconduct by an FCC employee;

4. Data needed to investigate miscellaneous complaints not covered by the FCC's formal or informal grievance procedure; and

5. Data needed to conduct inquiries under the ''President's Program to Eliminate Waste and Fraud in Government.''

6. Data needed to investigate violence, threats, harassment, intimidation, or other inappropriate behavior that causes an FCC employee or contractor to fear for his/her personal safety in the FCC workplace: case number; victim's name; office telephone number; room number; organization bureau/office/division/branch; duty station; position; supervisor; supervisor's telephone number; location of incident; activity at time of incident; circumstances surrounding the incident; perpetrator; name(s) and telephone number(s) of witness(es); injured party(s); medical treatment(s); medical report; property damages; report(s) to police and/or Federal Protective Services; and other miscellaneous information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 5; 29 CFR part 1960; 47 CFR 19.735–107; 5 U.S.C. 1303, 1304, 3301, 7902; and Executive Orders 10450, 11222, 12065, and 12196.

PURPOSE(S):

FCC Security Officer and the Personnel Security Specialist of the Security Office use the records in this system to provide investigative information to determine compliance with Federal regulations and/or to make a determination about an individual's suitability and fitness for Federal employment, access to classified information or restricted areas, position sensitivity, security clearances, evaluations of qualifications, and loyalty to the U.S; to evaluate qualifications and suitability to perform contractual services for the U.S. Government; to document such determinations; to respond to an inquiry conducted under the President's Program to Eliminate Waste and Fraud in the Government; to take action on, or to respond to a complaint about a threat, harassment, intimidation, violence, or other inappropriate behavior involving one or more FCC employees and/or contract employees; and to counsel employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation, or order where there is an indication of a violation or potential violation of a statute, regulation, rule, or order.

2. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry an individual has made to the Congressional office.

3. A record for this system of records maybe disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

4. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

5. A record from this system may be disclosed to designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, in response to their request, when such agency, office, or establishment conducts an investigation of the individual for the purpose of hiring, firing, or retention, granting a security clearance, making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or classifying jobs, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's purpose.

6. A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicatory body when:

(a) The United States, the Commission, a component of the Commission, or when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

7. A record from this system may be disclosed to the security officers of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to their request(s) for verification of security clearances of FCC employees to

have access to classified data or areas where their official duties require such access.

8. A record in this system may be disclosed to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant or pertinent enforcement information or records, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a grant or other benefit.

9. A record from this system may be disclosed to the Merit System Protection Board (MSPB) during the course of the MSPB's investigation of the individual's appeal, following the Commission's adverse action against the individual.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system of records include both paper and electronic records. Paper records are stored in file folders in security containers. The electronic records are maintained in a computer database.

RETRIEVABILITY:

Records are retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Paper records are maintained in file folders and stored in approved security containers, within a secure, access-controlled area with an intrusion alarm. Access is limited to approved security office and administrative personnel.

The electronic records are maintained in a ''stand-alone'' computer database, which is secured through controlled access and passwords restricted to security and administrative personnel on a ''need to know'' basis. The computers are located in a room with a simplex lock and intrusive alarm systems. The computer databases are maintained on a computer that is not connected to the FCC computer network. The databases are backed-up on a daily basis to floppy disk(s), which are then stored in a secured area.

RETENTION AND DISPOSAL:

Both paper and electronic records are retained during employment or while an individual is actively involved in federal programs. As appropriate, records are returned to investigating agencies after employment terminates; otherwise, the records are retained for five years from the date that the employee leaves the Commission.

Investigative files and the computer database, which show the completion of an investigation, are retained for 15 years, except for investigations involving potential actionable issue(s), which will be maintained for 25 years plus the current year from the date of the most recent investigative activity. Paper records are destroyed by shredding. Electronic records are destroyed by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Security Operations Center, Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street, SW., Room 1–B458, Washington, DC 20554.

NOTIFICATION, RECORD ACCESS AND CONTESTING RECORD PROCEDURES:

This system is exempt from the requirement that the agency publish the procedures for notifying an individual, at his or her request, if the system contains a record pertaining to him/her, for gaining access to such record, and for contesting the contents of the record.

RECORD SOURCE CATEGORIES:

This system is exempt from the requirement that the agency publish the categories of sources of records in this system.

EXEMPTION FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from sections (c)(3), (d), (e)(4)(G), (H), and (I), and (f) of the *Privacy Act of 1974,* 5 U.S.C. 552a, and from 47 CFR 0.554–0.557 of the Commission's rules. These provisions concern the notification, record access, and contesting procedures described above, and also the publication of record sources. The system is exempt from these provisions because it contains the following types of information:

1. Investigative material compiled for law enforcement purposes as defined in section (k)(2) of the Privacy Act.

2. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy, as stated in section (k)(1) of the Privacy Act.

3. Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, as described in section (k)(5) of the Privacy Act, as amended.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. 03–884 Filed 1–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Recordkeeping and Confirmation Requirements for Securities Transactions.''

DATES: Comments must be submitted on or before March 11, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to ''Recordkeeping and Confirmation Requirements for Securities Transactions.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Internet address: *comments@fdic.gov*). Comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Recordkeeping and Confirmation Requirements for Securities Transactions.

OMB Number: 3064–0028.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 4,732.

Average annual burden hours per Respondent: 27.91.

Estimated Total Annual Burden: 132,070 hours.

General Description of Collection: The information collection requirements are contained in 12 CFR 344. The regulation's purpose is to ensure that purchasers of securities in transactions effected by insured state nonmember banks are provided with adequate information concerning the transactions. The regulation is also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to the securities transactions they effect.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of January, 2003.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 03–867 Filed 1–14–03; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Interagency Notice of Change in Director or Executive Officer.

OMB Number: 3064–0097.

Annual Burden:

Estimated annual number of respondents: 200.

Estimated time per response: 2 hours.

Total annual burden hours: 400 hours.

Expiration Date of OMB Clearance: January 31, 2003.

SUPPLEMENTARY INFORMATION: The Interagency Notice of Change in Director or Executive Officer is submitted regarding the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer. The information is used by the FDIC to make an evaluation of the general character of individuals who will be involved in the management of depository institutions, as required by statute.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Customer Assistance.

OMB Number: 3064–0134.

Annual Burden:

Estimated number of respondents: 5,000.

Estimated time per response: 30 minutes.

Total annual burden hours: 2,500 hours.

Expiration Date of OMB Clearance: January 31, 2003.

SUPPLEMENTARY INFORMATION: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or on an optional form.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before February 14, 2003, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: January 10, 2003.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 03–866 Filed 1–14–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–1]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled ''Community Support Requirements'' to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on January 31, 2003.

DATES: Interested persons may submit comments on or before February 14, 2003.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board,

1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Emma Fitzgerald, Program Analyst, Community Investment and Affordable Housing Division, Office of Supervision, by telephone at 202/408–2874, by electronic mail at *fitzgeralde@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Federal Housing Finance Board (Finance Board) to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (FHLBank) members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). In establishing these community support requirements for FHLBank members, the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. 12 U.S.C. 1430(g)(2). Part 944 of the Finance Board's regulations implements section 10(g) of the Bank Act. *See* 12 CFR part 944. The rule provides uniform community support standards all FHLBank members must meet and review criteria Finance Board staff must apply to determine compliance with section 10(g). More specifically, section 944.2 of the rule implements the statutory community support requirement. 12 CFR 944.2. Section 944.3 establishes community support standards for the two statutory factors—CRA and first-time homebuyer performance—and provides guidance to a respondent on how it may satisfy the standards. 12 CFR 944.3. Sections 944.4 and 944.5 establish the procedures and criteria the Finance Board uses in determining whether FHLBank members satisfy the statutory and regulatory community support requirements. 12 CFR 944.4 and 944.5.

The information collection contained in Form 96–01, the Community Support Statement Form, and sections 944.2 through 944.5 of the rule is necessary to enable and is used by the Finance Board to determine whether FHLBank members satisfy the statutory and regulatory community support requirements. Only FHLBank members that meet these requirements may maintain continued access to long-term FHLBank advances. *See* 12 U.S.C. 1430(g).

The OMB number for the information collection is 3069–0003. The OMB clearance for the information collection expires on January 31, 2003.

The likely respondents are institutions that are members of a FHLBank.

B. Burden Estimate

The Finance Board estimates that a total annual average of 3970 FHLBank members will file a Community Support Statement, with one submission per member. The estimate for the average hours per submission is one hour. The estimate for the total annual hour burden for members that must file a Community Support Statement is 3970 hours (3970 members × 1 submission per member × 1 hour).

The Finance Board estimates a total annual average of 15 FHLBank members will submit a request to remove a restriction on access to long-term advances, with 1 request per member. The estimate for the average hours per reinstatement request is one hour. The estimate for the annual hour burden for reinstatement requests is 15 hours (15 members × 1 request per member × approximately 1.0 hour).

The Finance Board estimates that the total annual hour burden for all respondents is 3985 hours ((3970 members × 1 Community Support Statement per member +15 members × 1 reinstatement request per member) × 1.0 hour).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on October 15, 2002. *See* 67 FR 63660 (Oct. 15, 2002). The 60-day comment period closed on December 16, 2002. The Finance Board received one comment suggesting that it obtain CRA ratings from the Federal Financial Institution Examination Council (FFIEC) website instead of from members to reduce the reporting burden on members and eliminate in its entirety the reporting requirement for members with an ''outstanding'' CRA rating. At this time, obtaining CRA ratings from the FFIEC website is not an option because FFIEC generally reports CRA ratings three to six months after a CRA examination is completed while members receive the CRA rating immediately after an examination. Because of the delay in reporting on the FFIEC website, the Finance Board will continue to require members to report their most recent CRA rating on the Community Support Statement.

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: January 8, 2003.

Donald Demitros,

Chief Information Officer.

[FR Doc. 03–870 Filed 1–14–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011603–001.

Title: Great White Fleet and Tropical Shipping & Construction Co., Ltd. Slot Charter Agreement.

Parties: Great White Fleet Ltd., Great White Fleet (US) Ltd., Tropical Shipping & Construction Co., Ltd.

Synopsis: The proposed modification would substitute Great White Fleet (US) Ltd. for Great White Fleet Ltd., a Bermuda company, as a party to the agreement.

Agreement No.: 011800–001.

Title: Dole Ocean Cargo Express, Inc./Maersk Sealand Slot Charter Agreement.

Parties: Dole Ocean Cargo Express, Inc., A.P. Moller-Maersk Sealand.

Synopsis: The proposed modification would increase the number of slots that Dole will charter to Maersk Sealand under the agreement.

Agreement No.: 011836.

Title: WWL/K-Line Americas Space Charter Agreement.

Parties: Wallenius Wilhelmsen Lines AS, Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement would authorize the parties to share vessel space for the transportation of vehicles and other cargo in the trade between U.S. Atlantic and Gulf ports and ports on the East Coasts of Mexico and South America.

Agreement No.: 011837.

Title: HUAL/EUKOR Caribbean and Central America Space Charter Agreement.

Parties: HUAL AS, EUKOR Car Carriers, Inc.

Synopsis: The proposed agreement would authorize the parties to share vessel space for the transportation of rolling stock from U.S. Atlantic ports, including Puerto Rico, to ports in and on the Caribbean Sea. The parties request expedited review.

Dated: January 10, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–875 Filed 1–14–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 17754N.
Name: Adcom Express, Inc. dba Adcom Worldwide.
Address: 7424 W. 78th Street, Edina, MN 55439.
Date Revoked: December 15, 2002.
Reason: Failed to maintain a valid bond.

License Number: 13465F.
Name: AMT Freight, Inc.
Address: 2500 Logistics Drive, Battle Creek, MI 49015.
Date Revoked: November 21, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15453NF.
Name: B & H Overseas Shipping & Moving L.L.C.
Address: 695 Windsor Street, Hartford, CT 06120.
Date Revoked: December 15, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17663N.
Name: Data Cargo Co., Inc.
Address: 8757 NW 35th Street, Miami, FL 33172.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16525F.
Name: J-Lec Corp.
Address: 5405 NW 102nd Avenue, Suite 223, Sunrise, FL 33351.
Date Revoked: November 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17558N.
Name: JTK International Trading, Inc. dba Coastline Trans.
Address: 3200 Wilshire Blvd., Suite 1750 So. Tower, Los Angeles, CA 90010.
Date Revoked: December 18, 2002.
Reason: Failed to maintain a valid bond.

License Number: 13106N
Name: Knopf International, Inc.
Address: 2397 So. Dove Street, Alexandria, VA 22314.
Date Revoked: December 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 527F.
Name: Moran Shipping Agencies Inc. dba Patterson Wylde & Co.
Address: 1110 Wellington Avenue, Cranston, RI 02910.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11326N.
Name: Multimodal Service (NY) Inc.
Address: Cross Island Plaza, Suite 207, 133–33 Brookville Blvd., Rosedale, NY 11422.
Date Revoked: December 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4592F.
Name: Natasha International Freight, Inc.
Address: 12912 SW 133 Court, Suite A, Miami, FL 33186.
Date Revoked: November 30, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17240N.
Name: O.K. Shipping, Inc.
Address: 17936 E. Ajax Circle, City of Industry, CA 91748.
Date Revoked: December 5, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4262NF.
Name: Omni Express International, Inc.
Address: 10501 South La Cienega Blvd., Los Angeles, CA 90045.
Date Revoked: December 15, 2002.
Reason: Failed to maintain valid bonds.

License Number: 4485F.
Name: Prem International, Inc.
Address: 8412 NW 70th Street, Miami, FL 33166.
Date Revoked: December 6, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16996F.
Name: UC Bridge Inc.
Address: 210 West Walnut Street, Suite #A, Compton, CA 90220.
Date Revoked: November 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16971N.
Name: Wil Can (USA) Group Inc.
Address: 167–10 So. Conduit Avenue, Suite 210, Jamaica, NY 11434.
Date Revoked: November 30, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4134F.
Name: World Exchange, Inc.
Address: 8840 Bellanca Avenue, Los Angeles, CA 90045.
Date Revoked: November 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 2674F.
Name: World Express Cargo, Inc.
Address: 12613 Executive Drive, Suite 700, Stafford, TX 77477.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–874 Filed 1–14–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Zaklee International Corporation, 777 Henderson Blvd., Bay 2A, Folcroft, PA 190132, *Officers:* Daniel Zakorchemny, President, (Qualifying Individual), Sung Yin Zakorchemny, Vice President.

G & F West Indies Shipping, 1416 Blue Hill Avenue, #1, Boston, MA 02126, Duncan B. Greenwood, Soul Proprietor.

Montero Shipping Corp., 2341 Hoffman Street, Bronx, NY 10458, *Officer:* Derqui Noel Montero, President, (Qualifying Individual).

Logistics Unlimited, Inc., 23187 La Cadena, Laguna Hills, CA 92653, *Officers:* Michelle Rouillard, Vice President, (Qualifying Individual), Ted Shown, President.

Dated: January 10, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–873 Filed 1–14–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 29, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. David Bryan Cook; J.D. Cook Testamentary Trust, David B. Cook, Trustee; Bobbie Jean Cook; David Alexander Cook, all of Middlesboro, Kentucky, and Erin Elizabeth Bell, Louisville, Kentucky; to retain control of the voting shares of HFB Financial Corporation, Middlesboro, Kentucky, and thereby indirectly retain control of the voting shares of Home Federal Bank Corporation, Middlesboro, Kentucky.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. G. Harrison Scott; Shannon R. Scott; Sharry R. Scott; and J. Slade Lewis, all of Slidell, Louisiana, also known as The Scott Family Limited Liability Partnership; to acquire voting shares of BOL Bancshares, Inc., New Orleans, Louisiana, and thereby indirectly acquire voting shares of Bank of Louisiana, New Orleans, Louisiana.

Board of Governors of the Federal Reserve System, January 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–742 Filed 1–14–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: OBJECTIVE WORK PLAN, ANA Program Narrative, Application for Federal Assistance.

OMB No.: 0980–0204.

Description: The information collected by Program Narrative; Application for Federal Assistance, the Objective Work Plan, is needed to properly administer and monitor the Administration for Native Americans (ANA) Program's competitive areas—Social and Economic Development Strategies (SEDS), ANA Environmental Regulatory Enhancement, Native Language Preservation, and ANA Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities by providing information in an application for a grant award. This data is used by legislatively-mandated Native American review panels, and ANA, as the basis for recommendations for the decisions to award competitive ANA grants.

Respondents: Tribal Govt. Native non-profits, Tribal Colleges & Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	650	1	28	18,200

Estimated Total Annual Burden Hours: 18,200.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 9, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–802 Filed 1–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93587–2003]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans, ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance to promote the survival and continuing vitality of Native American languages.

Catalog of Federal Domestic Assistance Program Number: 93.587 Promoting the Survival and Continuing Vitality of Native American languages.

SUMMARY: The Administration for Native Americans (ANA) announces the availability of Fiscal Year 2003 funds for Native American Language projects. Financial assistance provided by ANA is designed to assist applicants in designing projects which will promote the survival and continuing vitality of Native American Language.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete; they are provided for information only. The applicant bears sole responsibility to assure that the copy download and/or printed from any other source is accurate and complete. Copies of this program announcement and many of the required forms may be obtained by calling the toll-free ANA applicant help desk or electronically at the ANA World Wide Web address *http://www.acf.hhs.gov/programs/ana/.*

Closing Date: The closing date for submission of applications is March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Contact the ANA Applicant Help Desk at 202–690–7776 or toll free at 1–877–922–9262 for assistance.

Part I: Supplementary Information

A. Purpose and Availability of Funds

The purpose of this notice is to announce the availability for fiscal year 2003 financial assistance to eligible applicants for the purposes of assisting Native Americans in ensuring the survival and continuing vitality of their languages. Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this announcement.

Approximately $2,000,000 in Fiscal Year 2003 has been allocated for category I and II grants.

For Category I, Planning Grants (projects length: 12 months), the funding level for a budget period of 12 months will be up to $60,000.

For Category II, Design and/or Implementation Grants (project length: up to 36 months), the funding level for a budget period of 12 months will be up to $150,000.

In accordance with current agency policies, ANA may fund additional highly ranked applications if additional funds become available prior to the next competition.

ANA continues a variety of requirements directed towards enforcing its policy that an eligible grant recipient may only have one active ANA grant awarded from a competitive area at any time. Therefore, while eligible applicants may compete for a Native American language grant in either of the two categories, an applicant may only submit one application and no applicant may receive more than one Native American language grant.

Ongoing for fiscal year 2003, are two White House Initiatives relating to Hawaiians and Pacific Islanders, and People with Disabilities. In accordance with the Executive Order on Asian American and Pacific Islanders, ANA encourages greater participation from Hawaiian and Pacific Islander communities. The Executive Order on People with Disabilities encourages all communities to address the needs of people with disabilities in all programs in accordance with the Americans with Disabilities Act (ADA). ANA encourages all Native communities to address the needs of people with disabilities in all aspects of their programs. ANA also encourages greater participation from Native organizations serving people with disabilities.

Note: Organizations from Palau are no longer eligible for assistance under ANA programs.

B. Background

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past 500 years. Consequently, the Native American Languages Act (Title 1, Pub. L. 101–477) was enacted to address this decline. This legislation vested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declared that it is the policy of the United States to ''preserve, protect and promote the rights and freedom of Native Americans to use, practice and develop Native American languages''. While the Congress made a significant first step in passing this legislation in 1990, it served only as a declaration of policy. No program initiatives were proposed, nor any funds authorized to enact any significant programs in furtherance of this policy. In 1992, Congressional testimony provided estimates that of the several hundred languages that once existed, only about 150 are still spoken or remembered toady. Furthermore, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken by the most elderly. In response to this testimony, the Congress passed the Native American Languages Act of 1992 (the Act), Public Law 102–524, to assist Native Americans in assuring the survival and continuing vitality of their languages. Passage of the Act was an important second step in an attempt to ensure the survival and continuation of Native languages. It provided the basic foundation upon which tribal nations can rebuild their economic strength and enhance the rich cultural diversity. The Federal government recognizes the substantial loss of Native American languages over the past several hundred years, and acknowledges the nature and magnitude of the status of Native American languages will be better defined when eligible applicants under the Act have completed language assessments. The Administration for Native Americans (ANA) believes that the responsibility for achieving self-sufficiency rests with the governing bodies of Indian Tribes, Alaska Native villages, and in the leadership of Native American groups. This belief supports the ANA principle that the local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs that support the community's long-range goals.

Therefore, since preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity, activities proposed under this program announcement will contribute to the social development of Native communities and significantly contribute to their efforts toward self-sufficiency.

The Administration for Native Americans recognizes that eligible

applicants must have the opportunity to develop their own language plans, improve technical capabilities, and have access to the necessary financial and technical resources in order to assess, plan, develop and implement programs to assure the survival and continuing vitality of their languages. ANA also recognizes that potential applicants may have specialized knowledge and capabilities to address specific language concerns at various levels. This program announcement reflects these special needs and circumstances.

C. ANA Program and Administration Policies

Applicants must comply with the following programming policies.

- Funds will not be awarded for projects addressing dead languages. For purposes of this announcement, dead languages are those languages that are no longer spoken by any tribal member or community member.
- At the end of the project period, products or project models of Native American language grants funded by this program announcement should be sent to the designated ANA repository. Federally recognized Indian Tribes are not required to comply with this condition. The Commissioner shall determine the repository for copies of products from Native American language grants funded under this program announcement.

Applicants must comply with the following administrative policies:

- Current Native American language grantees whose project period extends beyond September 30, 2003, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the same program area and may not compete for additional Native American language grants.
- Applicants for Category I may propose a 12- to 17-month project period.
- Applicants for Category II may propose up to 36-month projects.
- Applicants must describe a locally determined strategy to carry out a proposed project with fundable objectives and activities.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applicants from Tribal components which are tribally-authorized divisions of a larger Tribe, unless the application includes a tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the Native American languages program both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a tribal resolution that clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the Native American languages program both for the current competition and for the duration of the approved grant period, should the application be funded.
- ANA will only accept one application that serves or impacts a reservation, Tribe, or Native American community.
- Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the Federally recognized Tribe or State in which the corporation or association is domiciled. Organizations incorporating in American Somoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for these organizations for the purpose of eligibility for ANA funds.
- If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that a majority of its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with this requirement, applicants should provide information, such as by-laws or board regulations, establishing that at least a majority of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.
- Grantees must provide at least a 20 percent matching share of the total approved cost of the project. The total approved cost of the project is the sum of the federal request and the non-Federal share. Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Island are covered under Section 501(d) of Public Law 95–134, as amended (78 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, no match is required for grants to these insular areas.
- An itemized budget detailing the applicant's Federal and non-Federal share, and the source(s), must be included as an application.
- If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

D. Proposed Projects To Be Funded

Category I—Planning Grants

The purpose of a Planning Grant is to conduct an assessment and to develop the plan needed to describe the current status of the language(s) to be addressed and to establish community long-range goal(s) to ensure its survival. Project activities may include, but are not limited to:

- Data collection, compilation, organization and description of current language status through a ''formal'' method (e.g. work performed by a linguist, and/or a language survey conducted by community members) or an ''informal'' method (e.g. a community consensus of the language status based on elders, tribal scholars, and/or other community members);
- Establishment of community long-range language goals; and
- Acquisition of necessary training and technical assistance to administer the project and achieve project goal(s).

Category II—Design and/or Implementation Grants

The purposes of Design and/or Implementation Grants are so Tribes or communities may design and/or implement a language program to achieve their long-range goal(s) and to accommodate the Tribe or community in reaching their long-term language goal(s). The types of projects ANA may fund under Category II include, but are not limited to:

• Establishment and support of a community Native American language project to bring older and younger Native Americans together to facilities and encourage the teaching of Native American language skills from one generation to another;
• Establishment of a project to train Native American to teach Native American language to others or to enable them to serve as interpreters or translators of such languages;
• Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;
• Establishment or support of a project to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American language;
• Compilation, transcription and analysis of oral testimony to record and preserve Native American languages; and
• To purchase specialized equipment (including audio and video recording equipment, computers, and software) necessary to achieve the project objectives. The applicant must fully justify the need for this equipment and explain how it will be used to achieve the project objectives.

Applicants under Category II must be able to document that: language information has been collected and analyzed, that it is current (compiled within 36 months prior to the grant application); and, the community has established long-range language goals.

E. Eligible Applicants

Applications from the Republic of Palau are no longer eligible for assistance under ANA programs. Palau ceased to be a Trust Territory of the United States by virtue of the compact of Free Association Act.

The following organizations are eligible to apply under this competitive area:
• Federally recognized Indian Tribes;]
• Consortia of Indian Tribes;
• Incorporated non-federally recognized Tribes;
• Incorporated nonprofit multi-purpose community-based Indian organizations;
• Urban Indian Centers;
• National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
• Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
• Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
• Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
• Nonprofit Native organizations in Alaska with village specific projects;
• Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);
• Public and nonprofit private agencies serving native peoples from Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States;
• Tribally controlled community colleges, tribally controlled post-secondary vocational institutions;
• Native controlled colleges and universities located in Hawaii, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, which serve Native American Pacific Islanders; and
• Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.
• Participating Organizations: If a tribal organization, or other eligible applicant, decides that the objective of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college or university as a participating organization in its' application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

F. Grantee Share of the Project

Grantees must provide at least a 20 percent matching share of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. For example, a project requesting $100,000 in Federal funds must provide a non-federal share match of at least $25,000 (20% total approved project cost or 25% of federal request).

The non-Federal share may be met by cash or in-kind contributions. Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

As per 45 CFR 74.2, in-kind contributions are defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program''.

In addition, an applicant may include other Federal funding sources where legislation authorizes using specific types of funds for match, examples follow:
• Indian Child Welfare funds, through the Department of Interior;
• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
• Community Development Block Grant funds, through the Department of Housing and Urban Development.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications originating from American Samoa, Guam or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, for grants under this Native American language program, no match is required for grants to these insular areas.

G. Review Criteria

The proposed project should address the purposes of the Native American Language Acts stated and described in the Section I.B, ''Background'' of this announcement.

The evaluation criteria below are closely inter-related. Proposed projects will be reviewed on a competitive basis using the following separate sets of evaluation criteria; one set for Planning grant applications, the other set for Design and/or Implementation grant applications. Points are awarded only for applications that respond to these criteria.

Category I: Planning Grants

(1) Current Status of Native American Language(s) (15 points)

The application fully describes the current status of Native American language(s) in the community. Since obtaining this data may be part of the planning grant application being reviewed, applicants can meet this requirement by explaining their current language status and providing a detailed

description of any circumstances or barriers which have prevented the collection of community language data. If documentation exists, describe it in terms of current language status.

(2) Goals and Available Resources (25 points)

(a) The application describes the proposed project's long-range goals and strategies, including:

- How the specific long-range community goal(s) relate to the proposed project.
- How the goal(s) fit within the context of the current language status.
- The application explains how the community and the tribal government (where one exists) intend to achieve these goals.
- Applicants must indicate in their application how they intend to involve elders and other community members in the development of language goals and strategies, and in evaluation of project outcomes.
- Demonstrate community and Tribal government support for the project. The type of community served will determine the type of documentation necessary. Ways to demonstrate support include:
- A resolution from Tribes or tribal organizations stating that community involvement has occurred in project planning;
- Community surveys and questionnaires, including those developed to determine the level of community support for tribal resolutions; and
- Minutes of community meetings, tribal presentations and discussion forums.
- Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-federal share) which will assist and be coordinated with the project are described.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application.

(3) Project Approach: Objectives and Activities (30 points)

The application provides a narrative on the overall approach and operation of proposed project throughout entire project period. The application proposes a specific project Objective Work Plan (OWP). The proposed objectives in the Objective Work Plan(s) relate to the goal to ensure the survival and continuing vitality of Native American language(s). More specifically, they will achieve the Tribe's or Native American community's language goals for the proposed project.

The OWP includes project objectives and specific activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- The tribal government's and community's active involvement in the continuing participation of Native American language speakers;
- Measurable or quantifiable results or outcomes;
- How the results or outcomes relate to the community's long-range goals or the establishment of those goals;
- The approach supports a project that will be completed, or self-sustaining, or financed by other than ANA funds at the end of the project period.
- How the project can be accomplished with the available or expected resources during the project period;
- How the main activities will be accomplished;
- Who specifically will conduct the activities under each objective; and
- What the next steps may be after the Planning project is completed.

The project application, including the Objective Work Plan, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities. Applicants are encouraged to follow the recommended ANA application kit format however, it is not a requirement. The relevant information included in an Objective Work Plan should indicate what is to be achieved, how, by whom, when with indicators of evaluation.

(4) Organizational Capabilities/ Qualifications (20 points)

(a) Organizational Capability

- The management and administrative structure of the applicant is explained.
- Evidence of the applicant's ability to manage a project of the proposed scope is well defined.
- The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual designated to manage the project.
- An organizational chart is included that indicates where the proposed project will fit within the current structure.

(b) Organization/Project Staff Qualifications

- Position descriptions and/or resumes of project personnel, including those of consultants, are presented.
- The position descriptions and/or resumes relate specifically to the staff proposed in the Approach section and in the proposed budget of the application.
- Position descriptions very clearly describe the position and its duties, and clearly relate to the personnel staffing pattern required to achieve the project objectives.
- Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Resumes clearly identify which project staff position they fill. Resumes must be included if individuals have been identified for positions in the application.
- Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project.

Note: Applicants are encouraged to give preference to Native Americans in hiring staff and contracting services under an approved ANA grant.

(5) Budget (10 points)

A detailed and fully explained budget is provided for the budget period requested which:

- Aligns with budget categories in Section B of the Budget Information of the application (SF424–A)
- Includes a fully explained non-Federal share budget and its source(s).
- Justifies sufficient cost and necessary details to facilitate the determination of allowable cost and the relevance of these costs to the proposed project.

• Requests funds that are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This expenditure is mandatory for new grantees and optional for grantees that have had an ANA grant in the past. This travel and training should occur as soon as practical.

• Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security.

The applicant is strongly encouraged to provide a retirement plan fringe benefit for grant-funded employees' salaries up to five (5) percent. ANA supports a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan exists for the benefit of the grant-funded staff; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

Other plans may be submitted for review and approval during grant award negotiations. Alternate plans may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

Category II: Design and/or Implementation Grants

(1) Current Status of Native American language(s) (10 points)

(a) The application fully describes the current status of the Native American language to be addressed; current status is defined as data complied within the previous 48 months. The describion of the current status minimally includes the following information:

• Number of speakers.
• Age of speakers.
• Gender of speakers.
• Level(s) of fluency.
• Number of first language speakers (Native language as the first language acquired).
• Number of second language speakers (Native language as the second language required).
• Where Native language is used (e.g., home, court system, religious ceremonies; church, media, school, governance and cultural activities).
• Source of data (formal and/or informal).
• Rate of language loss or gain.

(b) The application fully describes existing community language or language training programs and projects, if any, in support of the Native American language to be addressed by the proposed project. The description should answer the following:

(1) Has applicant had a community language or language training program within the last 48 months? Within the last 10 years? If so, fully describe the program(s), and include the following:

• Program goals.
• Number of program participants.
• Number of speakers.
• Age range of participants (e.g., 0–5, 6–10, –11–18, etc.).
• Number of language teachers.
• Criteria used to acknowledge competency of language teachers.
• Resources available to the applicant (e.g., valid grammars, dictionaries, and orthographies or describe other suitable resources).
• Program achievements.

(2) If applicant has never had a language program, a detailed explanation of what barriers or circumstances prevented the establishment of a community language program should be included.

(2) Goals and Available Resources (20 points)

(a) The application describes the proposed project's long-range goals and strategies, including:

• How the specific Native American long-range community goal(s) relate to the proposed project; and
• How the goal(s) fit within the context of the current language status;
• A clearly delineated strategy to assist in assuring the survival and continued vitality of the Native American language addressed in the community.
• The application explains how the community and the tribal government (where one exists) intend to achieve these goals.
• All Tribes and communities, however, must indicate in their application how they intend to involve elders and other community members in development of language goals and strategies, and in evaluation of project outcomes. The type of community served will determine the type of documentation necessary to demonstrate participation.
• A resolution from Tribes or tribal organizations stating that community involvement has occurred in project planning. Ways to demonstrate community and tribal government support for the project include: Community surveys and questionnaires, including those developed to determine the level of community support for tribal resolution; and minutes of community meetings, tribal presentations and discussion forums.
• Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available Resources (other than ANA and the non-federal share) Available resources that will assist and be coordinated with the project are described. Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application.

(3) Project Approach: Objectives and Activities (30 points)

The proposed objectives in the Objective Work Plan(s) related to the goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve the Tribe's or Native American community's language goals for the proposed project. If the project is for more than one year, the application includes Objective Work Plans for each year (budget period) proposed. Each Objective Work Plan clearly describes:

• The tribal government's and community's active involvement in the continuing participation of Native American language speakers;
• Measurable or quantifiable results or outcomes;
• How they relate to the community's long-range goals or the establishment of those goals;
• How the project can be accomplished with the available or expected resources during the project period;

• How the main activities will be accomplished;

• Who specifically will conduct the activities under each objective; and

• The approach supports a project that will be completed, or self-sustaining, or financed by other than ANA funds at the end of the project period.

Applicants proposing multi-year projects under Category II must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

Multi-year projects under Category II must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

The project application, including the Objective Work Plan(s), must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities. Applicants are encouraged to follow the recommended ANA application kit format however, it is not a requirement. The relevant information included in an Objective Work Plan should indicate what is to be achieved, how, by whom, when and indicators of evaluation.

(4) Organizational Capabilities/ Qualifications (15 points)

The management and administrative structure of the applicant is explained.

(a) Organizational Capability

• Evidence of the applicant's ability to manage a project of the proposed scope is well defined.

• The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual designated to manage the project.

• An organizational chart indicating where the proposed Language project fits within the current organization is included.

(b) Organization/Project Staff Qualifications

• Position descriptions and/or resumes of project personnel, including those of consultants, are presented.

• The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Section and in the proposed budget of the application.

• Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives.

• Resumes demonstrate that the proposed staff is qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are encouraged to give preference to Native Americans in hiring staff and contracting services under an approved ANA grant.

(5) Budget (10 points)

Detailed Federal and Non-federal Share budgets and detailed budget justifications are provided for each budget period requested. The budget includes a line item justification for each requested budget category as listed in Section B of the Budget Categories Section on the SF 424A.

A detailed and fully explained budget is provided for each budget period requested which:

• Justifies sufficient cost and provides necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

• Requests funds that are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training the technical assistance conference. This expenditure is mandatory for new grant recipients and optional for grantees that have had ANA grants in the past. This travel and training should occur as soon as practical.

• Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is strongly encouraged to provide a retirement plan fringe benefit for grant-funded employees' salaries up to five (5) percent. ANA supports a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan exists for the benefit of the grant-funded staff; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant. An alternate plan may be submitted for review and approval during grant award negotiations. Other plans may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

(6) Evaluation, Sharing and Preservation Plans (15 points)

The application should include the following three (3) plans:

(1) An ''Evaluation Plan'' with a baseline to measure project outcomes, including, but not limited to, describing effective language growth in the community (e.g., an increase of Native American language use). This plan will be the basis for evaluating the community's progress in achieving its language goals and objectives.

(2) A ''Sharing Plan'' that identifies how the project's methodology, research data, outcomes or other products can be shared and modified for use by other Tribes or communities. If this is not feasible or culturally apropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and the continuing vituality of Native languages.

(3) A ''Preservation Plan'' to preserve project products describes how the products of the project will be preserved through archival or other culturally appropriate methods, for the benefit of future generations.

H. Application Due Date

The closing date for submission of applications under this program announcement is March 28, 2003.

Part II: General Guidance to Applicants

The following is provided to assist applicants in the development of a competitive application.

A. Definitions

• *Language Preservation:* is the maintenance of a language so that it will not decline into non-use.

• *Language vitality:* is the is the active use of a language in a wide range of domains of human life.

• *Language Replication:* is the application of a language program model developed in one community to other linguistically similar communities.

• *Language Survival:* is the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

• *Multi-purpose Community-based Native American Organization:* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or Officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.

• *Multi-year Project:* is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

• *Budget Period:* is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

• *Core Administration:* is funding for staff salaries for those functions that support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered ''core administration'' and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

• *Real Property:* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

• *Construction:* is the term that specifies a project supported through a discretionary grant or cooperative agreement, to support the initial building of a facility.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

• Projects that operate indefinitely or require ANA funding on a recurring basis.

• Projects in which a grantee would provide training and/or technical assistance (T/TA to other Tribes or Native American organizations which are otherwise eligible to apply to ANA (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives is acceptable.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• ANA will not fund the purchase of real property.

• ANA will not fund construction.

• ANA will not fund objectives or activities for the support of core administration of an organization.

• Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates. They must also be allocated their share of the organization's indirect costs if they represent activities which: (1) Include the salaries of personnel; (2) occupy space; and (3) benefit from the organization's indirect costs.

• Projects or activities that generally will not meet the purposes of this announcement are discussed further in Section G, ''General Guidance to Applicants'', below.

C. Multi-Year Projects

Only Category II, ''Design and/or Implementation'', projects may be developed as multi-year projects, i.e., for up to three years. The information in this section is not applicable to Category I, Planning projects.

A multi-year project is a project on a single theme that requires more than 12 to 17 months to complete. It affords the applicant an opportunity to develop and address more complex and in-depth strategies. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period. Initial awards, on a competitive basis, will be for a one-year budget period (up to 17 months), although project periods may be for three years.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be funded in subsequent years on a non-competitive basis. Continuation grants are subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

D. Intergovernmental Review of Federal Programs

Executive Order 12372 or 45 CFR part 100 does not cover this program.

E. The Application Process

1. Application Submission

(a) By Mail

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the closing date to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade SW., Mail Stop: Aerospace Center 8th Floor West, Washington, DC 20447–0002, Attention: Lois B. Hodge, ANA No. 93587–2003.

(b) By Courier or Hand Delivery

Applications hand-carried by applicants, applicant couriers, or by overnight express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the ours of 8 a.m. and 4 p.m. at: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois B. Hodge, ANA No. 93587–2003.

2. Application Consideration

The ANA Commissioner determine the final action to be taken on each grant application received under this program announcement. The Commissioner's funding decision is based on the review panel's analysis of the application,

recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and requires this program announcement, and the availability of funds.

Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ACF. An incomplete application is one that is:

- Missing Standard Form (SF) 424.
- Does not have an authorized signature on the SF 424. The application's Standard Form 424 must be signed by an individual authorized (1) to act for the applicant Tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.
- Does not include proof of non-profit status, if applicable.

Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and Native American languages evaluate each application using the published criteria in this announcement. As a result of the review, a normalized numerical score will be assigned to each application.

Each Tribe, Native American organization, or other eligible applicant may compete for one grant award under this program announcement.

The Administration for Native Americans will accept only one application for this program announcement from any one applicant. If an eligible applicant sends in two applications for this program announcement, the one with the earlier postmark will be accepted for review unless the applicant withdraw the earlier application.

Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark will undergo a pre-review of determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and,
- The application is signed by an authorized representative; and
- Submitted by the deadline; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Application subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be considered ineligible and excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Section G: Review Criteria. The criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. Projects will not be ranked based on general financial need.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applicants funded with fiscal year 2003 funds, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a panel review summary including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants, who are initially excluded from competitive evaluation because of ineligibility, may appeal the ANA decision of their ineligibility. Likewise, applicants may also appeal an ANA decision that their proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. General Guidance to Applicants

Application Kit: (OMB approved, control number 0980–0204, expires April 30, 2003). The application kit contains the necessary forms and instructions to apply for a grant under this program announcement. Application kits may be obtained from ANA Training and Technical Assistance (t/TA) providers.

Training and Technical Assistance: ANA employs contractors to provide short-term training and technical assistance to eligible applicants. T/TA is available under these contracts for a wide range of needs however, the contractors are not authorized to write applications. The T/TA is provided at no cost to the eligible entity. To obtain an application kit and/or, training and technical assistance, applicants are encouraged to contact the T/TA provider within the appropriate service area. To locate the T/TA provider currently serving the region you are located in you may call the ANA Help Desk at 1–877–922–9262; or visit the ANA web site at: *http://www.acf.hhs.gov/programs/ana/*.

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitute their specific ''community''.
- Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For Tribes, a current signed resolution from the governing body of the Tribe supporting the project proposal stating that there has been community involvement in the planning of this

project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members Tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

• Supporting documentation, including letters of support, if available, or other settlements from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project.

• In the ANA project narrative, ''Resources Available to the Proposed Project'', the applicant should describe any specific financial circumstances that may impact on the project. Include such circumstances as any monetary or land settlements made to the applicant and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not using these resources for the project.

2. Technical Guidance

• Applications that were not funded under a previous closing date may be resubmitted. However, for resubmission applicants should make a reference to the changes or reasons for not making changes in their current ANA application which are based on the ANA panel review comments.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency. If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.

• For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of federally recognized Indian Tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional Councils). Other federally recognized Indian Tribes, which are not included on this list (e.g., those Tribes that have been recently recognized or restored by the United States Congress), are also eligible to apply for ANA funds.

• The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or month per unit. During negotiation, ANA may delete such expenditures from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project.

• Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Grant Administrative Guidance

• The application's Standard Form(SF) 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans recommended that the pages of the application be numbered sequentially and that a table of contents and tabbing of the sections is provided.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The applicant should specify the entire project period length on the first page of the SF 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the SF 424 specify a conflicting length of project period, ANA will consider the project period specified on the SF 424 as the official request.

• Line 15a on the SF 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• Applicants may propose up to a 17-month project and budget period under Category I and up to a 36-month project period under Category II.

4. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Core administration functions, or other activities, which essentially support only the applicant's ongoing administrative functions.

• Project goals which are not responsive to this program announcement.

• Proposals from consortia of Tribes that are not specific with regard to support from, and roles of, member Tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.

• Proposals from consortia of Tribes should have individual objectives that are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both tribal consortia and a Tribe who belongs to the consortia receives ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member Tribes.

• Projects that will not be completed, or self-sustaining, or supported by other than ANA funds, at the end of the project period. All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. ''Completed'' means that the project ANA funded is finished, and the desired result(s) have been attained. ''Self-sustaining'' means that a project will continue without outside resources or project generated revenue. ''Supported by other than ANA funds'' means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

• Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, Tribe or village.

H. Paperwork Reduction Act of 1995 (Pub. L. 10413)

The Program Narrative information collection with this Program Announcement is approved under 0980–0204, Expiration Date 04/30/2003. Public reporting burden for this collection of information is estimated to average 29.5 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency

may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

I. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section E, The Application Process. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review. Applications and related materials postmarked after the closing date will be classified as late.

1. Deadlines

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (excluding Federal holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late Applications

Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Number: 93.587 Promoting the Survival and Continuing Vitality of Native American languages)

Dated: January 2, 2003.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 03–817 Filed 1–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–01]

Notice of Proposed Information Collection: Comment Request; Title I Property Improvement and Manufactured Home Loan Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 17, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collected techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Title I Property Improvement & Manufactured Home Loan Program.

OMB Control Number, if applicable: 2502–0328.

Description of the need for the information and proposed use: Title I loans are made by private sector lenders and insured by HUD against loss from defaults. HUD uses this information to evaluate individual lenders on their overall program performance. The information collected is also used to determine claim eligibility.

Agency form numbers, if applicable: HUD–637, 646, 27029, 27030, 55013, 55014, 56001, 56001MH, 56002, 56002MH, 56004, 92802.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of hours needed to prepare the information collection is 14,739; the number of respondents is 91,215 generating approximately 91,215 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the responses varies from one minute to one hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: December 26, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–787 Filed 1–14–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4816–N–01]

Notice of Proposed Information Collection: Comment Request; Implementation of the Housing for Older Persons Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement established under the final rule implementing the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the information collection requirement.

DATES: *Comments Due Date:* March 17, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection requirement. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Turner Russell, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 5210, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Turner Russell, Director, Enforcement Support Division, Office of Fair Housing and Equal Opportunity, Room 5208, 451 7th Street, SW., Washington, DC 20410, Telephone: (202) 619–8041 (this is not a toll-free number). Hearing of speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection requirement to the OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected, and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title of Regulation: 24 CFR Part 100, Implementation of the Housing for Older Persons act of 1995; final rule.

OMB Control Number, if applicable: 2529–0046.

Description of the need for the information and proposed use: In the Fair Housing Amendments Act of 1988 (the Act) [42 U.S.C. 3601 *et seq.*], Congress prohibited discrimination in the sale or rental of housing based on familiar status (families with children under 18 years of age). However, at § 3607(b)(2) of the act, Congress exempted 3 categories of ''housing for older persons'' from liability for familial status discrimination: (1) Housing provided under any State or program which the Secretary of HUD determines is specifically designed and operated to assist elderly persons; (2) housing intended for, and solely occupied by, persons 62 years of age or older; and (3) housing intended and operated for occupancy by at least one person 55 years of age or older per unit (''55 or older'' housing). In December 1995, Congress passed the ''Housing for Older Persons Act of 1995 (HOPA)'' [Public Law 104–76]. The HOPA modified the ''55 or older'' housing'' exemption provided under the Act by eliminating the requirement for ''significant facilities and services specifically designed to meet the physical or social needs of older persons.'' The HOPA still requires that at least 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older; and that housing providers must publish and adhere to policies and procedures that demonstrate the intent to provide housing for persons 55 years of age or older. In addition, the HOPA mandates compliance with ''rules issued by the Secretary for verification of occupancy, which shall * * * provide for [age] verification by reliable surveys and affidavits.''

The final rule does not significantly increase the record keeping burden. It describes in greater detail the documentation that HUD will consider when determining whether or not a community or facility qualifies for the ''55 or older'' housing exemption. Further, § 100.305(e)(5) of the final rule provides a non-extendible one-year transition period (May 3, 1999–May 3, 2000) for existing communities or facilities that wish to qualify for the ''55 or older'' housing exemption. An existing community or facility that fails to complete the transition by the expiration of that period must stop reserving vacant units for ''55 or older'' residents; market available housing to the general public regardless of familial status; and rescind all policies, practices, and procedures that discriminate against residents with minor children. By definition, such communities would no longer need to collect or maintain occupancy/age verification information for purposes of the ''55 or older'' housing exemption.

The information collection requirements contained in §§ 100.306 and 100.307 of the final rule are necessary to satisfy the criteria for the ''55 and older'' housing exemption under the HOPA. The information required under the act, the HOPA, and the HOPA final rule will be collected in the normal course of business in connection with the sale, rental, or occupancy of dwelling units within a ''55 or older'' housing community or facility. The statutory and regulatory requirement to publish and adhere to age verification policies and procedures for current and prospective occupants is the usual and customary practice of the ''senior housing'' industry without regard to the requirements of the Act or the HOPA. The procedures for verifying ages of current residents may require an initial survey and periodic review and update of existing records. The creation of such records should occur in the normal course of sale or rental transactions and should require minimal time.

Three types of information would be collected under the final rule. The publication of a community's housing policies and procedures is not confidential by nature of the fact that such policies and procedures must be disclosed to current and prospective residents, and to residential real estate professionals. The occupancy survey results must be available for public inspection. The survey summary need not contain confidential information because it may simply indicate the total number dwelling units occupied by persons 55 years of age or older. The supporting age verification records may contain some private information, which would be protected from disclosure unless the community or facility claims the ''55 or older'' housing exemption as a defense to a jurisdictional familial status discrimination complaint filed with HUD.

HUD's Office of Fair Housing and Equal Opportunity will only request disclosure of this information by a housing provider when HUD investigates a jurisdictional familial

status discrimination complaint, and the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to the complaint.

Agency form numbers(s), if applicable: None.

Members of affected public: Both the HOPA and the HOPA final rule require that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older to routinely collect and update age verification information necessary to meet the eligibility criteria for the ''55 or older'' housing exemption. The record keeping requirements are the responsibility of the housing provider that wishes to qualify for the exemption.

Estimation of the total numbers of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response: The information collection requirements of the HOPA final rule are the responsibility of the community or facility that claims eligibility for the ''55 or older'' housing exemption provided under the HOPA. Since the HOPA does not require HUD certification or registration for ''55 or older'' communities or facilities, it is difficult to estimate the number of communities or facilities that intend to collect this information in order to qualify for the exemption. When the proposed rule was published for public comment in January 1997, HUD estimated that approximately 1,000 communities or facilities would seek the exemption. HUD also estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the community or facility, and that the number of such transactions per year might vary significantly depending on the size and nature of the community. HUD estimated the average number of housing transactions per year at ''10 per community.'' HUD concluded that the publication of policies and procedures ''* * *is likely to be a one-time event and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden for the three collections is 5,500 hours.''

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 34, as amended.

Dated: January 8, 2003.

Diana Ortiz,

Director, Office of Enforcement.

[FR Doc. 03–788 Filed 1–14–03; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Bimonthly Meeting

Notice is hereby given in accordance with section 552b of Title 5, U.S.C., that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 6, 2003.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 4 p.m. at the Corporate Offices of Gateway Healthcare, Inc. located at 249 Roosevelt Ave., Second Floor Board Conference Room, in Pawtucket, RI for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762-0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 03–799 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by February 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Larry P. Carlson, N. Muskegon, MI, PRT–066199

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Joseph F, Hickey, Milwaukee, WI, PRT–066094

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Philip L. Rank, Westfield, WI, PRT–061812

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa

for the purpose of enhancement of the survival of the species.

Applicant: R. Vaughn Gourley, Las Vegas, NV, PRT–066213

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Wayne R. La Pierre, Vienna, VA, PRT–066214

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Lost Creek Animal Sanctuary Foundation, Mound Valley, KS, PRT–062377, 062378, and 063083

The applicant requests a permit to export, re-export, and re-import captive-born tiger (*Panthera tigris*) and captive-born African leopard (*Panthera pardus*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Gianni Mattiolo c/o Lost Creek Animal Sanctuary Foundation, Mound Valley, KS, PRT–063335 and 064068

The applicant requests a permit to export, re-export, and re-import captive-born tiger (*Panthera tigris*) and captive-born African leopard (*Panthera pardus*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Raymond Mancuso, Jupiter, FL, PRT–066169

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Soundpolar bear population in Canada for personal use.

Applicant: James F. Mitchell, Newhall, CA, PRT–064772

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: December 20, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–837 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by February 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Matson's Laboratory, LLC., Milltown, MT, PRT–065981

The applicant requests a permit to import teeth collected from wood bison (*Bison bison athabascae*) in the Mackenzi Sanctuary herd, from the Department of Renewable Resources, Government of the Northwest Territories, Canada, for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of 5 years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: December 27, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–838 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by February 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Thomas Productions, Inc., Las Vegas, NV., PRT–066158 and 066159.

The applicant requests permits to export, re-export, and re-import two captive-born tigers (*Panthera tigris*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: The Peregrine Fund, Boise, ID., PRT–065258.

The applicant requests a permit to import, export, and re-export multiple shipments of biological samples from wild, captive-held, and/or captive born endangered species of the order Falconiformes and Strigiformes from worldwide sources, for the purpose of scientific research. No animals can be intentionally killed for the purpose of collecting specimens. Any invasively collected samples can only be collected by trained personnel. This notification covers activities conducted by the applicant over a period of five years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: January 3, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–839 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On September 10, 2002, a notice was published in the **Federal Register** (67 FR 57445), that an application had been filed with the Fish and Wildlife Service by Ken Vorisek for a permit (PRT–061106) to import one polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on December 13, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On October 7, 2002, a notice was published in the **Federal Register** (67 FR 62490), that an application had been filed with the Fish and Wildlife Service by James Leroy Scull, Jr. for a permit (PRT–061116) to import one polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on December 12, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: December 20, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–840 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Service Regulations Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on January 23, 2003, to identify and discuss preliminary issues concerning the 2003–04 migratory bird hunting regulations.

DATES: The meeting will be held January 23, 2003.

ADDRESSES: The Service Regulations Committee will meet at the Arlington Square Building, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 200 A/B, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 23, 2003, at 8:30 a.m. to identify preliminary issues concerning the 2003–04 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: January 7, 2003.

Thomas O. Melius,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–836 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–24 1A

Extension of Approved Information Collection, OMB Approval Number 1004–0188

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from individuals who request rights-of-way on public lands that BLM administers under the regulations 43 CFR part 2800 and 43 CFR part 2880. The nonform information under 43 CFR part 2800 and 43 CFR part 2880 will allow BLM to:

(1) Process plans of development for complex right-of-way projects;

(2) Review and file location and project maps;

(3) Adjudicate applications for reductions in cost recovery fees;

(4) Properly assess rents on communication site rights-of-way;

(5) Determine whether or not applicants are qualified to hold right-of-way grants; and

(6) Determine the amount of fees that the applicants or grant holders owe the United States.

DATES: You must submit your comments to BLM at the address below on or before March 17, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (630), Bureau of Land Management, Mailstop 401LS, 1849 C Street, NW., Washington, DC 20240.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0188'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Realty Use Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM needs the information to administer its right-of-way program. Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the Secretary of the Interior to issue and renew rights-of-way through public lands under its jurisdiction. These rights-of-way uses are reservoirs, ditches, pipes and pipelines, electrical general and transmission systems, communication systems, roads, airways, and livestock driveways. BLM requires each right-of-way grant holder to reimburse for all reasonable administrative costs to process an application and monitor the right-of-way grant in accordance with section 504(g).

Section 28 of the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. 185 *et seq.,* authorizes the Secretary of the Interior to issue right-of-way grants through public lands to transport oil, gas, synthetic liquid or gaseous fuels or other refined products. The Act also allows for temporary use permits to supplement each oil and gas pipeline grant to construct, operate, maintain and terminate the pipeline, and to protect public health and safety. BLM requires right-of-way permit holders to reimburse for actual costs to process application for oil and gas pipeline grants under paragraph (f) of section 28.

The nonform information in the regulations under 43 CFR part 2800 and 43 CFR part 2880 authorizes BLM to collect this information to administer the rights-of-way program. Without this information, BLM would not be able to properly administer its right-of-way program.

Based upon BLM experience and recent tabulations of activity, we process approximately 5,066 applications each year. Depending on the complexity of the applications for rights-of-way, responses vary from 8 to 40 hours to complete. The estimated number of responses per year is 5,066. The estimated total annual burden is 126,650 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: January 8, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–776 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–FA–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1044–0114

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1994, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from owners of unpatented claims, mill sites, and tunnel sites. BLM uses Forms 3830–2 and 3830–3 to collect this information to:

(1) Record such claims and sites;

(2) Determined the land status at the time of location;

(3) Collect annual maintenance and location fees;

(4) Process Waivers of annual fees;

(5) Process annual affidavits of labor or notices of intent to hold a mining claim or site;

(6) Process requests for deferments from assessment work;

(7) Process transfers of interest; and

(8) Adjudicate such claims and sites.

The regulations under 43 CFR part 3830–3833, 3840–3843, 3850–3852 authorized BLM to collect the above information to manage the general mining law activities on public lands.

DATES: You must submit your comments to BLM at the address below on or

before March 17, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (630), Bureau of Land Management, Mailstop 401LS, 1849 C Street, NW., Washington DC 20240.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0114'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Roger A. Haskins on (202) 452–0372 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Haskins.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Federal Land Policy and Management Act of 1976, 30 U.S.C. 28f (Pub. L. 105–277), and the regulations under 43 CFR parts 3830–3833, 3840–3843, 3850–3852 authorizes BLM to collect information from owners of unpatented claims, mill sites and tunnel sites to manage the general mining law activities on public lands.

BLM uses Form 3830–2 (Maintenance Fee Waiver) to collect the information to waive the $100 annual maintenance fee that owners of unpatented mining claims, mill sites, and tunnel sites must pay. The owners of unpatented mining claims, mill sites, and tunnel sites must submit the following information to BLM:

(1) The mining claims names and BLM serial numbers;

(2) A declaration that the owners own or have interest in 10 or fewer claims or sites;

(3) A declaration of compliance with the assessment work requirements;

(4) The names and addresses of all owners of the claims and sites; and

(5) The owners'/agents' signatures.

BLM uses Form 3830–3 (Notice of Intent to Locate A Lode or Placer Mining Claim(s) and/or A Tunnel Site(s) and Lands Patented Under the Stock Raising Homestead Act of 1916, amended to collect information on an applicant who files a notice of intent to locate or explore for a mining claim or tunnel site. The applicant must submit the following information to BLM:

(1) The name and mailing address of the applicant filing the notice of intent to locate or explore for a mining claim or tunnel site;

(2) A legal land description of the lands which the notice of intent will apply;

(3) A brief description of the proposed mineral activities;

(4) A map and legal land description of lands subject to mineral exploration;

(5) The name, address, and phone number of the person managing the activities; and

(6) The dates the activities will take place.

BLM uses the information on recording claims, annual assessment work, notice of intent to hold, and transfer of interest to:

(1) Determine the number and location of unpatented mining claims, mill sites and tunnel sites located on Federal lands to assist in the surface management of these lands and any minerals found there;

(2) Remove any cloud on the title to those lands due to abandoned mining claims;

(3) Provide information as to the location of active claims; and

(4) Keep informed of transfers of interest and ownership.

Without this information, BLM could not protect the rights of surface and mineral owners. Also, the Government's ability to locate, control, and manage surface disturbance is compromised.

Based upon BLM experience, the public reporting information collection burden takes eight minutes per response. The respondents are owners of unpatented mining claims, mill sites, and tunnel sites located on public lands and individuals or organizations who seek to explore for or locate a mining claim. The estimated number of responses per year is 236,852 and the total annual burden is 31,580 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: January 9, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–777 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting date change.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, Feb. 27 and 28, 2003, at the BLM's Eagle Lake Field Office, 2950 Riverside Dr., Susanville, CA. The meeting date is changed from an earlier announced date of January 9 and 10, 2003.

SUPPLEMENTARY INFORMATION: The original meeting notice was published in the **Federal Register** on December 9, 2002 (Vol. 67, No. 236, page 72969). Details, including the meeting location, starting time and agenda items, are unchanged from that publication.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Alturas Field Manager, at (530) 233–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–784 Filed 1–14–03; 8:45 am]

BILLING CODE 4310–40–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and Rules of Evidence

AGENCY: Advisory Committees on Rules of Bankruptcy and Criminal Procedure,

and Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of cancellation of two open hearings and rescheduling of one open hearing.

SUMMARY: The following public hearings on proposed rules amendments have been canceled:

- Bankruptcy Rules in Washington, DC., on January 24, 2003; and
- Criminal Rules in Atlanta, Georgia, on January 31, 2003.

The public hearing on proposed amendments to the Evidence Rules, originally scheduled for January 27, 2003, has been rescheduled for April 25, 2003, in Washington, DC. Original notice of hearings appeared in the **Federal Register** of August 23, 2002.

Notice of Open Hearings

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, One Columbus Circle, NE., Washington, DC 20544, telephone (202) 502–1820.

Dated: January 9, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–835 Filed 1–14–03; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 29, 2002, and published in the **Federal Register** on August 19, 2002, (67 FR 53810), Abbott Laboratories, 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The firm plans to import the remifentanil to manufacture Ultiva for the U.S. market.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Abbott Laboratories to import remifentanil is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Abbott Laboratories on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–769 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated June 10, 2002, and published in the **Federal Register** on June 20, 2002, (67 FR 42059), Celltech Manufacturing CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the listed controlled substance to make finished dosage forms for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Celltech Manufacturing CA, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Celltech Manufacturing CA, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security system, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacture of the basic class of controlled substance listed above is granted.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–768 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2002, and published in the **Federal Register** on June 20, 2002, (67 FR 42059), National Center for Development of Natural Products, The University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to bulk manufacture for product development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of National Center for Development of Natural Products to manufacture the listed controlled substances is consistent with the public interest at this time. This determination was based on, among other things, DEA's on-site investigation of the National Center for Development for Natural Products. The investigation included inspection and testing of the applicant's qualifications and experience, verification of the applicant's compliance with state and local laws, and a review of the firm's background and history. DEA has further determined that the registration will be consistent with United States obligations under international treaties. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of

controlled substances listed above is granted.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–767 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 24, 2002, and published in the **Federal Register** on July 10, 2002, (67 FR 45765), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocanabinols (7370)	I
Alphamethadol (9605)	I
Cocaine (9041)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import the listed controlled substances to manufacture controlled substances for use in drug abuse testing kits.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Roche Diagnostics Corporation to import listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostic Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigation have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basis classes of controlled substances listed above.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–771 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 12, 2002, and published in the **Federal Register** on August 6, 2002, (67 FR 50899), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Stepan Company, Natural Products Department to import coca leaves is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Stepan Company, Natural Products Department on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 13, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–770 Filed 1–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,888 & A; Jasper Cabinet Co., Jasper, IN and Ferdinand, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,428; Zenith Dye and Finishing Corp., Paterson, NJ

The investigation revealed that criterion (a)(2)(A) (1.C) (Increased imports) and (a)(2)(B)(II. C.1) (Has shifted production to a country not under the free trade agreement with the US) have not been met.

TA–W–50,060; GKN Sinter Metals, Gallipolis, OH

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,142; Midas International Corp., Muffler Corp. of American Div., Hartford, WI

TA–W–50,013; Georgia-Pacific Corp., OSB Plant, Baileyville, ME

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,211; Trigon Engineering Co., Little Rock, AR

TA–W–42,012; ACS, Inc., Phoenix, AZ

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer for trade-affected companies.

TA–W–50,262; Engineered Polymers Corp., a Subsidiary of GBR Holding Corp., Formerly a Subsidiary of Cookson Investments, a Subsidiary of Cookson Group PLC, Mora, MN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,308; Shipping Systems, Inc., a Subsidiary of Bancroft Bag, Crossett, AR: October 2, 2001.

TA–W–42,200; Multi-Tool, Inc., Saegertown, PA: August 27, 2001.

TA–W–41,840; Corbin, LTD, Huntington, WV: June 21, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,178; Evanite Fiber Corp., a Subsidiary of Hollingsworth & Vose Co., Hardboard Div., Corvallis, OR: November 2, 2001.

TA–W–50,089; E-Mu Systems, Scots Valley, CA: November 5, 2001.

TA–W–50,144; Saint-Gobain Abrasives, Flowery Branch, GA: November 12, 2001.

TA–W–50,295; Vaughan Furniture Co., Galax, VA: November 6, 2001.

TA–W–50,146; Tetra Tool Company, Erie, PA: November 12, 2001.

TA–W–50,400; Staktek Group L.P., Austin, TX: December 13, 2001.

TA–W–50,214; Arvin/Meritor, Oshkosh Facility, Oshkosh, WI: November 27, 2001.

TA–W–50,195; Zsml Corp., Pacoima, CA: November 14, 2001.

TA–W–50,176; Idaho Circuit Technology Corp., Glenns Ferry, ID: November 22, 2001.

TA–W–50,174; Burgess Norton Manufacturing Co., Div. of Amsted Industries, Muskegon, MI: November 9, 2001.

TA–W–50,145; Ardco Holdings, Inc., Formerly Anthony International, Scottsboro, AL: November 19, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,277; Heico-Ohmite, LLC, Skokie, IL: December 3, 2001.

TA–W–50,113; Fleming Lumber Co., Inc., Milligan, FL: November 18, 2001.

TA–W–50,140; Basler Electric Co., Corning, AR: November 18, 2001.

TA–W–50,301; DeLong Sportswear, Inc., Quanah, TX: December 11, 2001.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm as been met.

TA–W–50,071; Graphic Metals, Inc., Bay City, MI: November 11, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–06650; State of Alaska Commercial Fisheries Entry Commission Permit #595360, Dillingham, AK

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

NAFTA–TAA–07214; Permit #60370A, Egegik, AK

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06438 & A; Corbin, LTD, Ashland, KY and Huntington, WV: August 1, 2001.

I hereby certify that the aforementioned determinations were issued during the months of December, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 6, 2003.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–804 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,976]

Black and Decker, North American Power Tools, Including Leased Workers of Employment Control, Inc., Easton, Maryland; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 10, 2002, applicable to workers of Black and Decker, North American Power Tools, Easton, Maryland. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67422).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that leased workers of Employment Control, Inc. were employed at Black and Decker, North American Power Tools to produce corded power tools as well as provide administrative support service for the production of corded power tools at the Easton, Maryland location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of Employment Control, Inc. employed at Black and Decker, North American Power Tools, Easton, Maryland.

The intent of the Department's certification is to include all workers of Black and Decker, North American Power Tools who were adversely affected by increased imports and a shift in production to Mexico.

The amended notice applicable to TA–W–41,976 is hereby issued as follows:

All workers of Black and Decker, North American Power Tools, Easton, Maryland, engaged in production of corded power tools, including leased workers of Employment Control, Inc. engaged in employment related to the production of corded power tools at Black and Decker, North American Power Tools, Easton, Maryland who became totally or partially separated from employment on or after August 1, 2001, through October 10, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–807 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,581 and TA–W–41,581A]

The Cincinnati Gear Company, Cincinnati, Ohio, and the Cincinnati Gear Company, Erlanger, Kentucky; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 22, 2002, applicable to workers of The Cincinnati Gear Company, Cincinnati, Ohio. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78252).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of gears and transmissions.

New findings show that worker separations occurred at the Erlanger, Kentucky facility of The Cincinnati Gear Company. The workers were engaged in the production of gears and transmissions and the final assembly of the entire unit until all production ceased in May 2002.

Accordingly, the Department is amending the certification to cover workers at The Cincinnati Gear Company, Erlanger, Kentucky.

The intent of the Department's certification is to include all workers of The Cincinnati Gear Company who were adversely affected by increased imports and to also correctly identify the name of the subject firm to read The Cincinnati Gear Company.

The amended notice applicable to TA–W–41,581 is hereby issued as follows:

All workers of The Cincinnati Gear Company, Cincinnati, Ohio (TA–W–41,581), and Erlanger, Kentucky (TA–W–41,581A), who became totally or partially separated from employment on or after May 1, 2001, through November 22, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 2nd day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–809 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,069]

L.W. Packard & Co., Inc. Ashland, New Hampshire; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 29, 2002, applicable to workers of L.W. Packard & Co., Inc., Ashland, New Hampshire. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78258).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that the Department issued certification coverage to all workers of the subject firm's Ashland, New Hampshire location.

The investigation conducted for the subject firm was conducted on behalf of workers producing woolen fabrics for ladies' and men's coats. The investigation revealed that customer imports of woolen fabrics increased while sales, production and employment declined during the period of the investigation.

Information provided by the State also shows that workers of the subject firm have ceased production of woolen fabrics. Workers currently employed at the facility perform other services and are separately identifiable from workers who produced woolen fabrics.

Based on these findings, the Department is amending the certification to cover all workers of L.W. Packard & Co., Inc., Ashland, New Hampshire, engaged in employment related to the production of woolen fabrics.

It is the intent of the Department to include all workers engaged in employment related to the production of woolen fabric of L.W. Packard & Co., Inc. Ashland, New Hampshire adversely

affected by increased imports of woolen fabrics.

The amended notice applicable to TA–W–50,069 is hereby issued as follows:

All workers of L.W. Packard & Co., Inc., Ashland, New Hampshire, engaged in employment related to the production of woolen fabrics, who became totally or partially separated from employment on or after November 8, 2001, through two years from the date of the original certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–806 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,418]

RHO Industries, Buffalo, New York; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 29, 2002, the Union of Needletrades Industrial and Textile Employees, Rochester Regional Joint Board requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of RHO Industries, Buffalo, New York was issued on June 28, 2002, and was published in the **Federal Register** on July 18, 2002 (67 FR 47400).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (3) of the group eligibility requirements of section 222 of the Trade Act of 1974 was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the subject firm. The company did not import chest piece inter-linings during the relevant period. The workers produced chest piece inter-linings.

The request for reconsideration alleges that the company went out of business since they could not raise prices due to alleged foreign competition undercutting the company's prices.

A review of data supplied during the initial investigation shows that the company was not impacted by imports of chest piece inter-linings. The company and a major declining customer that accounted for virtually all of the company's sales did not import chest piece inter-linings during 2000 through March 2002.

The allegation that the company could not raise prices, due to foreign competition undercutting the firms price is not relevant to meeting the eligibility requirements of section 223 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–805 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,469 and TA–W–41,469A]

Telect, Liberty Lake, Washington, Including Employees of Telect Located in Illinois; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 19, 2002, applicable to workers of Telect, Liberty Lake, Washington. The notice was published in the **Federal Register** on September 10, 2002 (67 FR 57453).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Liberty Lake, Washington facility of Telect located in Illinois. These employees provided sales function services for the production of fiber optic patchcords and pigtails at the Liberty Lake, Washington location of the subject firm.

The intent of the Department's certification is to include all workers of Telect who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,469 is hereby issued as follows:

All workers of Telect, Liberty Lake, Washington (TA–W–41,469), including employees of Telect, Liberty Lake, Washington, located in Illinois (TA–W–41,469A), who became totally or partially separated from employment on or after April 16, 2001, through August 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–808 Filed 1–14–03; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2 Exemption

1.0 Background

PSEG Nuclear LLC (PSEG or the licensee) is the holder of Facility Operating License Nos. DPR–70 and DPR–75 which authorize operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), respectively. The licenses provide, among other things, that the Salem Nuclear Generating Station, Unit Nos. 1 and 2 are subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Salem County, New Jersey.

2.0 Purpose

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 55.59(c), a facility's licensed operator requalification program must be conducted for a continuous period not to exceed 2 years and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs.

The Code of Federal Regulations at 10 CFR 55.11 states that ''The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest.''

3.0 Discussion

By letter dated October 28, 2002, PSEG requested a change to the Salem operator licensing requalification training program completion date. This request constitutes a request for exemption under 10 CFR 55.11 from schedule requirements of 10 CFR 55.59(c). The schedule exemption requested would extend the period for completing the Salem requalification training program from October 3, 2002, to January 9, 2003. The next requalification period would begin on January 14, 2003, and end on December 31, 2004, with subsequent requalification periods remaining on a January to December schedule.

The schedule change will allow the facility licensee to align the Salem requalification program with the requalification program of their Hope Creek Generating Station. The affected licensed operators will continue to demonstrate and possess the required levels of knowledge, skills, and abilities needed to safely operate the plant. The limited 3-month delay in completion of the requalification program will include a Special Training Segment for licensed operators. Thus, there is a negligible effect on operator qualification.

4.0 Conclusion

The Commission has determined that pursuant to 10 CFR 55.11, granting an exemption to the facility licensee from the schedule requirements in 10 CFR 55.59(c), by allowing Salem a one-time extension in the allowed time for completing the licensed operator requalification training program, is authorized by law and will not endanger life or property and is otherwise in the public interest.

Therefore, the Commission hereby grants PSEG Nuclear LLC an exemption on a one-time only basis from the schedule requirements of 10 CFR 55.59(c), to allow the completion date for the licensed operator requalification training program at Salem to be extended from October 3, 2002, to January 9, 2003. The next requalification training program will commence on January 14, 2003, and be completed by December 31, 2004, with subsequent 2-year requalification programs to continue on a January to December schedule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 1213).

This exemption is effective upon issuance, and expires on January 9, 2003.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 9th day of January 2003.

Bruce A. Boger,

Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–863 Filed 1–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641]

Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of environmental assessment and finding of no significant impact related to license amendment to the Department of the Air Force Master Materials License No. 42–23539–01AF, Department of the Air Force, USAF Radioisotope Committee, HQ AFMOA/SGPR, 8901 18th Street, Brooks AFB, Texas, 78235–5217.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to the Department of the Air Force Master Materials License No. 42–23539–01AF to authorize decommissioning of its Site OT–10 training facility at Kirtland AFB and has prepared an environmental assessment in support of this action. Based upon the environmental assessment, the NRC has concluded that a finding of no significant impact is appropriate, and, therefore an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Rachel S. Browder, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011; telephone (817) 276–6552 or email *rsb3@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared an environmental assessment related to a license amendment to Materials License 42–23539–01AF, authorizing decommissioning of the Site OT–10 at Kirtland AFB. On the basis of this environmental assessment, the NRC has concluded that this licensing action would not have any significant adverse effect on the quality of the human environment, and therefore, an Environmental Impact Statement is not required.

Environmental Assessment

1.0 Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the U.S. Air Force's (USAF's) request for approval of the Kirtland Air Force Base (AFB) Decommissioning Plan (DP), located in Albuquerque, New Mexico. The licensee requested that four former Defense Nuclear Weapons School (DNWS) Radiation Training Sites at Kirtland AFB's be released for unrestricted use. The four training sites were identified for remediation under the USAF's Installation Restoration Program as Site OT–10. The purpose of this environmental assessment (EA) is to assess the environmental consequences of this license amendment request.

1.1 Background

The DNWS Radiation Training Sites are located in the north central part of Kirtland AFB. From 1961 to 1990, these sites were used to train radiological response personnel to detect contamination generated during simulated nuclear weapons accidents. Known quantities of Brazilian thorium oxide sludge were applied and tilled into site soils to simulate dispersed plutonium. The training sites are owned by the U.S. Government and regulated by the NRC under the USAF Master Materials License No. 42–23539–01AF. Four inactive training sites (TS5, TS6, TS7 and TS8) comprise Kirtland AFB's Installation Restoration Program Site OT–10 and are being decommissioned to meet the NRC requirements for unrestricted use, as defined in NRC regulations.

The OT–10 training sites consist of approximately 43 acres, in which approximately 9.2 acres (3.7 hectares) were affected with elevated thorium

concentrations at the time of the most recent investigation.

The licensee submitted the DP in July 2000. A revised August 2002 DP was transmitted by cover letter dated November 19, 2002, with the final site-specific derived concentration guideline levels (DCGLs) submitted on October 2, 2002. In accordance with 10 CFR 40.42, the DP describes the site conditions, the planned decommissioning activities, radiation safety program, planned final radiation survey, and the cost estimate for decommissioning. Decommissioning would occur for approximately 1½ years, tentatively from January 2003, and is expected to continue throughout 2003. Submittal of the final status survey report to the NRC is planned for early 2004.

The radioactive contaminated soil would be removed in accordance with the DP and the licensee's standard operating procedures. The licensee has committed to excavating contaminated soil, vegetation, and debris and transferring them directly to intermodal containers, sampling and analyzing the excavated materials, manifesting the waste, and transporting the waste containers to a licensed disposal facility. The radioactive material would be packaged, handled and stored according to the appropriate health and safety procedures. Packaging contaminated soil would conform to the Department of Transportation (DOT) regulations and the disposal site requirements. The USAF would transfer the contaminated soil in intermodal containers by truck to West Control Specialist (WCS) in Andrews County, Texas, or in intermodal containers by rail or truck to Envirocare of Utah.

1.2 Purpose and Need for Proposed Action

The purpose of the proposed action is to reduce residual contamination at the site for unrestricted use and removal of the OT–10 training site from the license. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for decommissioning that ensures protection of the public health and safety and environment.

2.0 Alternatives, Including the Proposed Action

2.1 Proposed Action

The proposed action is to decontaminate and remediate the OT–10 training sites to release for unrestricted use as delineated in 10 CFR part 20, subpart E, that being 25 mrem/year total effective dose equivalent (TEDE) to the critical group (*i.e.*, resident farmer scenario).

The ultimate goal of the decommissioning is to release the OT–10 training sites from the USAF Master Materials License. The general decommissioning would result in the excavation of the source material from the OT–10 training sites to meet the unrestricted use criteria. The excavated material would be transported to a licensed low-level radioactive waste (LLRW) facility (*e.g.*, Envirocare of Utah) for disposal. The unimportant quantities of source material, as defined in 10 CFR 40.13, would be shipped to a burial facility (*e.g.*, West Control Specialist (WCS) facility in Andrews, TX). Following any necessary remediation, the licensee would perform final status surveys in the area in accordance with the NRC approved DP.

2.2 Alternatives to the Proposed Action

There are no alternatives to the proposed actions besides taking no action.

2.2.1 No Action

NRC considered the no-action alternative relative to USAF's request for approval of the DP. The no-action alternative would mean that NRC would not approve the DP and, therefore, would not be able to amend the license. The no-action alternative is not acceptable because it would conflict with NRC's requirement in 10 CFR 40.42, ''Expiration and termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas,'' of timely remediation at facilities or outdoor areas that have ceased NRC licensed operations. Therefore, the no-action alternative is not considered to be reasonable and is not analyzed further in this EA.

3.0 Affected Environment

Eight training sites were established in November 1961 in the north-central part of Kirtland AFB, which is located in Albuquerque, New Mexico (USAF, 2001b). Training activities were discontinued at four of the training sites in 1990. These four training sites, designated as OT–10 under the USAF's Installation and Restoration Program, are located south of Pennsylvania Avenue, on Kirtland AFB. TS8 was also used as a storage site and has two storage bunkers located within its fenced area. In addition, TS6 contains solid waste management unit (SWMU) SS–69, a 50-ft by 50-ft fenced area previously used to store drums of thorium oxide sludge, contaminated soil and waste fuels. SWMU SS–69 is managed as a separate corrective action unit under Kirtland AFB's Resource Conservation and Recovery Act (RCRA) part B permit.

The following sections provide detailed information on the specific environmental resources and subject areas relevant to the nature of the proposed action.

3.1 Physiography, Geology and Soils

Kirtland AFB is located on a high, semiarid piedmont alluvial plain and adjacent foothills, about 5 miles east of the Rio Grande. The alluvial plain is cut by the east-west trending Tijeras Arroyo, which drains into the Rio Grande. The western portion of Kirtland AFB lies within the Albuquerque-Belen Basin. The Albuquerque-Belen structural basin contains the through-flowing Rio Grande and lies within a series of grabens and structural basins called the Rio Grande Rift. The deposits consist of interbedded gravel, sand silt, and clay, the bulk of which are referred to as the Santa Fe Group. The soils types consist of Tome very fine sandy loam, Gila fine sandy loam, Bluepoint-Kokan association, Wink fine sandy loam and Tijeras gravelly fine sandy loam.

The Santa Fe Group contains sediments which were deposited as an alluvial fan, playa and fluvial deposits that filled the subsiding basin. The thicknesses of most basin-fill deposits are greater than 3,000 feet, although the thickness varies considerably because of faulting in the basin. The Santa Fe Group contains beds of unconsolidated to loosely consolidated sediment and interbedded volcanic rock. The materials range in size from boulders to clay.

3.2 Meteorology, Climatology, and Air Quality

The climate at Kirtland AFB is typical of a high-desert plateau, with low precipitation, wide temperature extremes and typically, clear sunny days. The mean annual precipitation is about 8.4 inches and the mean annual snowfall is 1.25 inches. Summer rains typically account for nearly half of the annual moisture, in the form of brief but heavy local thunderstorms. The prevailing wind direction from May through October is south to southeast, and the mean wind speed is about 8 knots. From November through April, the prevailing wind direction is north to northwest, and the mean wind speed is 7 knots.

3.3 Water Resources

The four training sites are located in the Hydrogeologic Region of Kirtland AFB. The estimated hydrologic

conductivity in this unit ranges from less than 0.3 ft/day to greater than 30 ft/day. The depth to groundwater is between 300 to 500 ft. Groundwater is thought to be unconfined in the upper portion of the aquifer, but this may not be true in all areas. The uppermost aquifer occurs within the Santa Fe Group.

A shallow saturation zone above the regional aquifer, approximately 200 to 250 ft below ground surface has been identified in the Hydrogeologic Region. This zone is located adjacent to and northwest of the Kirtland AFB landfill. It is associated with either a system of multiple perched aquifers or a groundwater mound. The extent of a shallower saturation zone has not been defined and it is unknown if it exists in the vicinity of the four training sites.

3.4 Ecology

The four former training sites that are to be decommissioned are in the Plains and Great Basin Grasslands. These grasslands are generally flat and open, lying from 4,900 to 7,500 feet in elevation. Common vegetation includes needle-and-thread, galleta grass, sand dropseed, grama grasses, Indian ricegrass, fourwing saltbush, broom snakeweed, sagebrush, winter fat, and yucca.

According to the Kirtland AFB Integrated Natural Resource Management Plan, there are no known federally listed threatened or endangered species on the AFB. The western burrowing owl (Athene cunicularia hypugaea) is a federal species of concern that has been observed on Kirtland AFB. This bird nests in prairie dog towns. The loggerhead shrike (Lanius ludovicianus) is also a federal species of concern. Loggerhead shrikes occupy grassland, pinyon-juniper, and riparian habitats. This species has been observed on the AFB and is found in the area throughout the year.

The gray vireo (Vireo vicinior) is the only state-listed threatened species known to be on the AFB. Gray vireos have been observed in ungrazed juniper woodland at the base of the western foothills of the Manzanita Mountains at elevations between 5,900 and 6,600 feet. This area is located in the easternmost portion of the AFB. Site OT–10 would not present attractive habitat to the gray vireo because of its distance from vireo nesting areas.

Critical habitats are those areas considered essential for maintaining or restoring threatened or endangered species populations. Neither the New Mexico Department of Game and Fish nor the U.S. Fish and Wildlife Service has designated or identified any critical habitat on the AFB.

3.5 Noise

The land use for the training sites and surrounding areas is classified as public or institutional and noise generated by the proposed decommissioning would not affect residents. Noise is quantified by decibels (dB), weighted by a day-night average sound level (DNL). A DNL of 65 dB is often utilized in planning and represents a compromise between community impact and the need for aviation and industrial activities. Areas exposed to DNL above 65 dB are generally not considered suitable for residential use. The DNL in and around the runways at Kirtland AFB typically exceeds 65 dB. Therefore, the immediate areas surrounding the base runways, including the proposed decommissioning area, are not classified for residential use.

Existing potential noise sources at Kirtland AFB are aircraft, firing ranges, explosive testing, and motor vehicles. An assessment of aircraft noise, including Kirtland aircraft operations, was performed at the Albuquerque International Sunport. The noise baseline attributed to aircraft noise in the proposed OT–10 decommissioning area is 65–70 dB.

Firing ranges and weapons training ranges contribute to moderate, localized noise impacts at Kirtland AFB. Harmful noise levels; that is, those exceeding 140 dB, from weapons testing activities remain within the boundaries/buffer zone of the Kirtland AFB. However, explosive detonations with noise levels of this magnitude are limited to 6–10 tests per year.

Off-road vehicle noise sources, including military transport and military weapons vehicles, are the primary sources of noise from the training and withdraw areas at Kirtland AFB. The military vehicles operate well below speeds of street traffic and measurements have shown that the military vehicles are up to 10 dB noisier than heavy trucks.

Noise generated by motor vehicles is more prevalent in congested areas of Kirtland AFB. Motor vehicle noise was evaluated in a 1995 Kirtland AFB study in a 24-hour traffic count at Gibson Gate and resulted in 71 dB, averaged over a 24-hour period.

Noise impact analyses conducted for the current activities at the Kirtland AFB concluded that there are no adverse impacts to people or wildlife. Military training activities at the AFB are conducted in remote areas, buffered by land, and are restricted to authorized personnel.

3.6 Historical and Cultural Resources

The area directly surrounding the proposed project area was surveyed for cultural resources and one historic site was located. This site would not be disturbed by the proposed action. No other historic properties have been located surrounding the project area.

3.7 Summary of Radiological Conditions

The four training sites which have been discontinued from use and have been identified by the USAF for decommissioning, were used to train U.S. Department of Defense (DOD), U.S. Department of Energy (DOE), Federal Emergency Management Agency (FEMA), and other federal and state personnel in the detection of dispersed contamination resulting from simulated nuclear weapons accidents. Known quantities of Brazilian thorium oxide sludge were applied and tilled into site soils to simulate dispersed radiological contamination. The thorium oxide sludge served as a low hazard analog for plutonium. A total estimated inventory of approximately 602 kilograms (kg) of thorium-232 was applied at the inactive sites. The estimated thorium-232 inventory, by site, is presented in the following table.

Training site	Approximate area of site in acres (hectares)	Approximate area contaminated in acres (hectares)	Estimated thorium-232 (kg)
TS5	13 (5.26)	1.7 (0.687)	215
TS6	19 (7.69)	6.7 (2.71)	307
TS7	8 (3.23)	0.6 (0.24)	36
TS8	2 (0.81)	0.4 (0.16)	44

USAF had characterized the OT–10 training sites during four investigations between 1988 and 2001. The first investigation was a limited site survey conducted between December 1985 and January 1990. The first extensive scan investigation was performed between October 1994 and May 1995, which included surface gamma surveys and soil sampling to delineate the general extent of the contamination. The most recent investigation was conducted in 1996 and 1998 and included an assessment of radionuclides and chemicals in the background soil and contaminated soil in the training sites, geophysical surveys of the sites, a health physics assessment and radionuclide grain size analysis. During the 2001 survey, the licensee selected a non-impacted background area and performed extensive analyses for background data. Additionally, the licensee performed building surveys of the two bunkers located in TS8.

The quantities and concentrations of thorium-232 contaminated soil above background, at the four training sites are summarized in the following table. The data was taken from the results of the 1994 to 1995 investigation.

Training site	Soil contaminated (yd^3)	Avg depth of contamination (in)	Avg Th-232 concentration (pCi/g)	Range of Th-232 concentration (pCi/g)
TS5	5,637	16	67.9	2.2–421.6
TS6	15,599	16	100.8	2.8–683.4
TS7	60	16	55.4	2.3–466
TS8	6,223	16	76.4	2.1–1,047.9

Approximately 9.2 acres (3.7 hectares) of the 43.2 acre (17.48 hectares) site are impacted with Brazilian thorium oxide sludge. The contaminants of potential concern associated with thorium oxide sludge include thorium-232 and its decay progeny and to a lesser extent, uranium-238 and its decay progeny. The extent of contamination is limited to the immediate vicinity of the training sites and to a maximum depth of 5 feet (1.524 meters) below ground surface. The vertical extent of ground contamination is typically 1–2 feet (0.61 meters) below ground surface. An estimated 27,500 cubic yards yd^3 (21,025 m^3) are radiologically contaminated.

The licensee considered five environmental pathways for the determination of the DCGL based on the conceptual modeling for Kirtland AFB. These five pathways include: external radiation, inhalation of particulates and radon, ingestion of soil and plant foods. There are no indications of contamination migration into surface water drainages or groundwater.

3.7.1 Radiological Status of Structures and Equipment

The DP outlines procedures for decommissioning Buildings 28005 and 28010 at training site TS8. The contamination on the interior surfaces of these storage bunkers exceeds the limits established in 10 CFR 20.1402, for the radiological criteria for unrestricted use for building surfaces. The interior surfaces of the bunkers would be cleaned and tested to determine if the remaining contamination level is acceptable. Demolition and disposal of these buildings would be performed if the contamination cannot be removed. Additionally, the licensee has established action levels that would ensure effluent releases generated during decommissioning activities, such as scabbling or demolition, are below the levels allowed by 10 CFR part 20. The NRC would require the USAF to comply with the regulations established in 10 CFR part 20, to ensure the doses would be bounded by 25 mrem.

3.7.2 Radiological Status of Surface and Subsurface Soils

The licensee performed analysis of collected soil samples, scanning measurements and used historical information to classify soil survey units. The licensee calculated concentration guidelines for surface contamination of soils in the impacted areas of the training sites using RESRAD code, Version 6.1. The DCGLs would define the maximum amount of residual contamination in soils that would satisfy the NRC's regulations in 10 CFR part 20, subpart E, ''Radiological Criteria for License Termination.''

4.0 Environmental Impacts

There are limited potential short-term environmental impacts associated with the proposed decommissioning activities. The following sections discuss possible impacts on the environment resulting from approval of the DP.

4.1 Non-Radiological Impacts

Completion of the decommissioning activities would allow for unrestricted use of the site. The proposed decommissioning action would have a positive environmental impact on the area since low-level radioactive contamination would be removed from the soil above the aquifer.

4.1.1 Land Use and Socioeconomic Impacts

This action would not have an adverse impact on future land use. Kirtland AFB has used the training sites since they were established in 1961. Remediation activities would provide a long-term positive impact to local socioeconomic conditions. Currently, land areas at Site OT–10 cannot be used for activities other than radiological training because dose rates associated with contamination there can exceed 25 mrem/year. Removal of radiologically contaminated materials would free the sites for recreational, residential, and/or industrial use. In addition, removal of Site OT–10 from administrative controls would release economic resources for use elsewhere.

4.1.2 Air Quality

There are no expected adverse impacts to air quality as a result of planned decommissioning activities. There would be a slight increase in dust emissions during the removal of the contaminated soil; however, there is little likelihood that airborne radioactive material would be a problem on the site during any operation conducted for the remediation. USAF would minimize the potential for airborne effluent releases by using light water spray to suppress the dust during activities that could generate significant quantities of dust. Activities that could generate significant quantities of dust include the excavation of the soil, processing and packaging of the remediated soil into the intermodal containers. Heavily traveled, clean areas would also be sprayed lightly.

4.1.3 Water Resources

This action would not have an adverse impact on water resources. The Kirtland AFB OT–10 training sites are not located in a flood plain of any streams or rivers. There are no wetlands located in the project area. There would

be no water bodies diverted in order to remediate the training sites. Accumulating rainwater in affected areas would be dammed, mixed with contaminated soils, and/or left to evaporate. Only small quantities of water would be used for dust suppression.

4.1.4 Ecological Resources

No long-term impacts to ecological resources are expected. However, short term impacts to flora and fauna would occur. The excavated areas would be graded to match pre-decommissioning topography and replaced with natural vegetation to blend with the landscape. The shrubs and grasses removed from radiologically impacted land areas would be replaced at the end of the project. Burrowing animals would likely leave the site during decommissioning activities and return when site vegetation has reestablished.

Kirtland AFB consulted with state and federal caretakers of natural heritage information. The licensee reviewed the Kirtland AFB Integrated Natural Resources Management Plan and Threatened and Endangered Species Survey of Kirtland AFB, New Mexico. According to the Kirtland AFB Integrated Natural Resource Management Plan, there are no known federally listed threatened or endangered species on the AFB. The New Mexico Natural Heritage Program (NMNHP) and the U.S. Fish and Wildlife Service (USFWS) were specifically requested to search their records for information on threatened or endangered species in the geographic areas where the decommissioning activities would occur; that is, Bernalillo County, Township 9 North, Range 4 East, Sections 7, 8, 9, 16, 17, and 18. The NMNHP and the USFWS determined that the proposed decommissioning activities would have no effect on federally listed endangered or threatened species.

The western burrowing owl (Athene cunicularia hypugaea) is a federal species of concern that has been observed on Kirtland AFB. Kirtland AFB personnel would survey the OT–10 sites immediately prior to decommissioning activities. If encountered, burrowing owls would be relocated, as documented in the DP.

4.1.5 Noise Impacts

Because noise levels are expected to exceed regulatory limits, site contractors would be required to apply hearing protection measures to protect workers. The storage bunkers which may be demolished, would be performed using a backhoe equipped with shears and/or jackhammer. According to the study at the University of Washington, these activities have a mean 1-minute noise level of 86.1 dB. The noise generated from the decommissioning activities result from excavating equipment (front-end loader, dozer, and backhoe), a crane, water trucks, and light and heavy truck traffic. Soil in hot spots would be excavated from the surface to an estimated depth of 1 to 2 feet below the ground surface, using a backhoe. Soil in areas of dispersed contamination would be removed using a dozer. Front-end loaders or backhoes would transfer the contaminated soil, surface debris, and vegetation into steel intermodal containers. A crane would transfer the intermodal containers to transport trucks. All construction activities would occur during daytime hours. According to a study conducted by the University of Washington, the average noise generated at construction sites during ''site preparation'' is 82.7 affective decibels (dBA). Site preparation (site grading, debris and vegetation removal) noise levels are assumed comparable to the activities associated with the proposed decommissioning. In addition, the U.S. Army Corps of Engineers (USACE) set a noise exposure limit for construction sites of 85 dBA, which is consistent with National Institute for Occupational Safety and Health and U.S. Occupational Safety and Health Administration (OSHA) limits (90 dBA, 29 CFR 1910.95).

4.1.6 Historical and Cultural Resources Impact

The Site OT–10 decommissioning activities pose no long or short-term impacts to cultural/historical resources. After surveying for cultural resources, one historic site was located. However, this site would not be disturbed by the proposed action. No other historic properties have been located surrounding the project area. Therefore, the proposed project would have no adverse effect to historic properties or cultural resources. If cultural resources, including Indian artifacts, are found within the project area during decommissioning, work would discontinue and Kirtland AFB personnel would follow procedures outlined in the Kirtland AFB Cultural Resource Management Plan. By letter dated, April 9, 2002, the New Mexico State Historic Preservation Officer stated that this project would have a no adverse effect to historic properties.

4.1.7 Visual Resources

Only short-term impacts to site aesthetics would occur. Construction equipment would obstruct views. However, there are no homes near the training sites which would be impacted. The shrubs and grasses removed from radiologically impacted land areas would be replaced at the end of the project. In addition, removal of debris and fences and potentially the Bunkers 28005 and 28010 at training site TS8, would improve site aesthetics.

4.1.8 Transportation

It is estimated there would be 1370 intermodal containers of contaminated soil and debris shipped offsite. Each truck would carry one intermodal container loaded with approximately 19 cubic yards of waste. It is estimated that 10 to 12 trucks will leave the base per day, 5 days per week for 7 to 8 months. There would be approximately 685 shipments by truck and/or rail to Envirocare of Utah in Clive, Utah, and 685 shipments by truck to Waste Control Specialists in Andrews County, Texas. Containers shipped to Envirocare will travel west on Gibson Boulevard to either Interstate 25 (truck shipments) or rail siding at 100 Woodward Road (rail shipments). If rail transport is utilized, the intermodal containers would be loaded onto six-position railcars with approximately 115 railcars utilized to transport the intermodals. Containers destined for WCS will travel north on Eubank Boulevard then west on Interstate 40 and south on State Highway 285.

The addition of 10 to 12 trucks to a documented traffic volume on Gibson Boulevard of 27,000 to 45,000 vehicles per day poses a negligible impact to traffic volume (TransCore, 2001). Ten to 12 trucks add less than 0.03 to 0.04 percent to the daily vehicle load.

Under normal operating conditions there is no expected dose to vehicle operators and members of the public, since the wastes are of low activity and would be shipped in U.S. DOT-compliant, strong-tight containers. The only radiological risks associated with the transport of the wastes would involve the cleanup of any spilled material. In the unlikely event that a spill were to occur during transport, radiological controls would most likely be implemented during the cleanup of the spilled waste material. Therefore, the risks associated with the transport of the waste material is minimal.

4.1.9 Occupational Health Impacts

Short and long-term impacts to human health, in terms of industrial hygiene, are possible. A Site-Specific Health and Safety Plan (HSP) that addresses known and reasonably anticipated health and safety hazards would be provided to site workers

(USAF, 2001a). The HSP is intended to provide enough information to site personnel to prevent and minimize personal injuries, illnesses, and physical damage to equipment, supplies, and property. The HSP contains a code of safe practices for oversight activities on this project. Contractors performing heavy equipment operations would be required to submit activity hazard analyses covering work means and methods and the anticipated hazards and controls.

4.2 Radiological Impacts

Occupational doses to decommissioning workers are expected to be low and well within the limits of 10 CFR part 20. No radiation exposure to any member of the public is expected, and public exposure would therefore also be less than the applicable public exposure limits of 10 CFR part 20. In addition, the licensee would install a security fence around each training site to control access and prevent unauthorized, untrained or unprotected personnel from entering the site. Therefore, the environmental impacts from the proposed action are expected to be small.

Short and long-term impacts to human health due to radiological exposure are not expected. These include the potential release to the environment of airborne effluents, which may contain low-levels of radioactive contamination during certain activities such as excavation, packaging and waste transportation. NRC regulation 10 CFR part 20 specifies the maximum amounts of radioactive materials that a licensee can release from a site in the form of either airborne or liquid effluents. The licensee has described in the DP, the controls established when these activities are being conducted. The controls include the use of light water spray to control the emissions of dust and work area particulate sampling. Site controls would be implemented to prevent unauthorized, untrained, or unprotected personnel from entering the site, to limit the spread of contamination, and to reduce the radiation exposures to safe ALARA levels. A radiation safety program would be implemented to protect site workers.

The licensee performed analysis of collected soil samples, scanning measurements and used historical information to classify soil survey units. The licensee calculated concentration guidelines for surface contamination of soils in the impacted areas of the training sites using RESRAD code, version 6.1. The DCGLs would define the maximum amount of residual contamination in soils that would satisfy the NRC's regulations in 10 CFR part 20, subpart E, ''Radiological Criteria for License Termination.'' The NRC would not approve the DP unless it met the 25 mrem for unrestricted release criteria and the doses would be bounded by 25 mrem.

Additionally, the interior surfaces of the bunkers would be cleaned and tested to determine if the remaining contamination level is acceptable. Demolition and disposal of these buildings would be performed if the contamination cannot be removed. Additionally, the licensee has established action levels that would ensure effluent releases generated during decommissioning activities, such as scabbling or demolition, are below the levels allowed by 10 CFR part 20. The NRC would require the USAF to comply with the regulations established in 10 CFR part 20, to ensure the doses would be bounded by 25 mrem.

4.3 Cumulative Impacts

The NRC has evaluated whether cumulative environmental impacts could result from an incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions in the area. The proposed NRC approval of the DP, when combined with known effects on resource areas at the site, are not anticipated to result in any cumulative impacts at the site.

5.0 Monitoring

The licensee has described in the DP the controls established when activities are being conducted which may have the potential of releasing airborne effluents to the environment. The USAF would implement an environmental air monitoring program. Daily air monitoring would be performed to quantify the amount of alpha radiation being generated by invasive (*e.g.*, clearing, grubbing, excavating and loading) decommissioning activities. The controls established include the use of ambient air and exposure monitoring and monitoring of personnel. The NRC would require the USAF to comply with the regulations established in 10 CFR part 20, which specifies the maximum amount of radiological materials that a licensee can release from a site in the form of either airborne or liquid effluents. The licensee has established action levels that would ensure that effluent releases during decommissioning activities are below the levels allowed in 10 CFR part 20. The licensee has committed to implementing a health physics program for the protection of the workers and the environment.

6.0 Conclusions

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are not significant, and therefore, do not warrant denial of the license amendment request. The NRC staff believes that the proposed action would result in minimal environmental impacts. The staff has determined that the proposed action of decommissioning Site OT–10 to the remediation levels would result in reduced residual contamination levels at Kirtland AFB training sites, enabling release of the areas for unrestricted use and termination of the area from the Air Force Master Materials License, is the appropriate alternative for selection.

7.0 Agencies and Persons Consulted

The NRC staff has prepared this environmental assessment (EA) with input from the State of New Mexico's Office of Cultural Affair, by letter dated April 9, 2002, and the U.S. Fish and Wildlife Service, by letter dated March 28, 2002. By letter dated February 7, 2002, after considering the documentation submitted by the licensee concerning the location of the decommissioning project, the State of New Mexico's Natural Heritage Program determined that there were no records of special interest species affected by the referenced project. In its letter, the State of New Mexico's Office of Cultural Affairs indicated that the proposed action would not adversely affect any historic properties. The U.S. Fish and Wildlife Service, indicated in its letter, that the described action would have no effect on listed species, wetlands, or other important wildlife resources. The staff provided a draft of this EA to the State of New Mexico for review. This EA was revised to reflect the State's input where appropriate. Accordingly, it has been determined that a finding of no significant impact is appropriate.

The Department of the Air Force's request for the proposed action was previously noticed in the **Federal Register** on 66 FR 33579, on Friday, June 22, 2001, along with a notice of opportunity to request a hearing and an opportunity to provide public comment on the action and its environmental impacts.

The Department of the Air Force's request for the proposed action and other related documents are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. The DP may be found in ADAMS at

Accession Numbers ML011560740 and ML023390060; while other documentation may be found at ML022490164 and ML022490363. Any questions with respect to this action should be referred to D. Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011–4005. Telephone: (817) 860–8191, fax number (817) 860–8188.

Dated in Arlington, Texas, this 8th day of January, 2003.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 03–862 Filed 1–14–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 60 calendar days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, (202) 336–8563.

Summary of Form Under Review

Type of Request: Form Renewal.
Title: Sponsor Disclosure Report.
Form Number: OPIC–129.
Frequency of Use: Once per major sponsor, per project.
Type of Respondents: Business or other institutions.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies sponsoring projects overseas.
Reporting Hours: 5 hour per project.
Number of Responses; 150 per year.
Federal Cost: $12,730 per year.
Authority for Information Collection: Sections 231 and 234(a) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The OPIC 129 form is the principal document used by OPIC to gather information from project sponsors on whether a project might harm the U.S., a describes sponsor activities with the U.S. Government and other information for underwriting an analysis of a project.

Dated: December 30, 2002.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–816 Filed 1–14–03; 8:45 am]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2003. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2003 is 4.92 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 2002 and January 2003.

For premium payment years beginning in:	The required interest rate is:
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08

For premium payment years beginning in:	The required interest rate is:
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2003, as announced by the IRS, is 5 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	3/31/03	5

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the first quarter (January through March) of 2003 (*i.e.*, the rate reported for December 16, 2002) is 4.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	3/31/03	4.25

Multiemployer Plan Valuations Following Mass Withdrawal The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of January 2003.

Joseph H. Grant,

Deputy Executive Director and Chief, Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–830 Filed 1–14–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission; Office of Filings and Information Services; Washington, DC 20549.

Extension:

Rule 15g–6, Sec File No. 270–349, OMB Control No. 3235–0395

Rule 17a–8, Sec File No. 270–53, OMB Control No. 3235–0092

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Rule 15g–6—Account statements for penny stock customers.

Rule 15g–6 under the Securities Exchange Act of 1934 (the ''Act'') requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. The information is required to be provided to customers of broker-dealers that effect penny stock transactions in order to provide those customers with information that is not now publicly available. Without this information, investors would be less able to protect themselves from fraud and to make informed investment decisions.

The staff estimates that there are approximately 270 broker-dealers that are subject to the rule. The staff estimates that the firms affected by the rule will, at any one time, have approximately 150 new customers with whom they have effected transactions in penny stocks, each of whom would receive a maximum of 12 account statements per year, for a total of 1,800 account statements annually for each firm (150 customers × 12 account statements/customer). The staff estimates that a broker-dealer would expend approximately three minutes in processing the information required for each account statement. Accordingly, the estimated average annual burden would equal 90 hours (1,800 account statements × 3 minutes/account statement × 1 hour/60 minutes), and the estimated average total burden would equal 24,300 hours (90 hours × 270).

• Rule 17a–8—Financial Recordkeeping and Reporting of Currency and Foreign Transactions.

Rule 17a–8 under the Act requires brokers and dealers to make and keep certain reports and records concerning their currency and monetary instrument transactions. The requirements allow the Commission to ensure that brokers and dealers are in compliance with the Currency and Foreign Transactions Reporting Act of 1970 (''Bank Secrecy Act'') and with the Department of the Treasury regulations under that Act.

The reports and records required under this rule initially are required under Department of the Treasury regulations, and additional burden hours and costs are not imposed by this rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–791 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 2a–7, SEC File No. 270–258, OMB Control No. 3235–0268.

Notice is hereby given that under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget, a request for extension of approval for rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'').

Rule 2a–7 governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act and, subject to certain risk-limiting conditions, permits money market funds to use the ''amortized cost method'' of asset valuation or the ''penny-rounding method'' of share pricing.

Rule 2a–7 imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value (''NAV''). The board also must adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's adviser. These procedures and guidelines typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, and determinations with respect to adjustable rate securities and asset backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to form N–SAR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to form N–SAR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds.

Commission staff estimates that 891 money market funds are subject to rule

2a–7 each year.[1] The staff estimates that each of these funds spends an average of 539 hours each year to document credit risk analyses, and determinations regarding adjustable rate securities, asset backed securities, and securities subject to a demand feature or guarantee.[2] In addition, each year an estimated average of three money market funds each spends approximately one-half hour to record (in the board minutes) board determinations and actions in response to certain events of default or insolvency, and to notify the Commission of the event.[3] Finally, Commission staff estimates that in the first year of operation, the board of directors, counsel, and staff of an average of 15 new money market funds each spends 38.5 hours to formulate and establish written procedures for stabilizing the fund's NAV and guidelines for delegating certain of the board's responsibilities to the fund's adviser. Based on these estimates, Commission staff estimates the total burden of the rule's paperwork requirements for money market funds to be 480,830 hours.[4] This is an increase from the previous estimate of 319,211 hours. The increase is attributable to updated information from money market funds regarding hourly burdens, a more accurate calculation of the component parts of some information collection burdens, and the significant differences in burden hours reported by the funds selected at random to be surveyed in different submission years.

These estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

In addition to the burden hours, Commission staff estimates that money market funds will incur costs to preserve records, as required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[5] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $1 million. Based on an average cost of $0.0000052 per dollar of assets under management for small and medium-sized funds to $0.0000024 per dollar of assets under management for large funds,[6] the staff estimates compliance with rule 2a–7 costs the fund industry approximately $5 million.[7] Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.0000097 per dollar of assets under management for large funds, the staff estimates that the total annualized capital/startup costs range from $0 for small funds to $20 million for all large funds. Commission staff further estimates, however, that even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($10 million) and for record preservation ($2.5 million) to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

The collections of information required by rule 2a–7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–789 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

[1] This estimate is based on information in the Money Fund Vision database, compiled by iMoneyNet (Sept. 6, 1999).

[2] This average is based on discussions with individuals at money market funds and their advisers. The amount of time may vary significantly for individual money market funds.

[3] This number may vary significantly from year to year.

[4] This estimate is based on the following calculation: ((891 × 539) + (3 × 1) + (15 × 38.5)) = 480,830.

[5] The amount of assets under management in money market funds ranges from approximately $100,000 to $70.6 billion.

[6] For purpose of this PRA submission, Commission staff used the following categories for fund sizes: (i) Small—money market funds with $50 million or less in assets under management, (ii) medium—money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large—money market funds with more than $1 billion in assets under management.

[7] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $191.3 billion under management in small and medium funds, and $2,078 billion under management in large funds, the total amount was estimated as follows: ($0.0000052 × $191.3 billion) + ($0.0000024 × $2,078 billion) = $5 million.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Review

Upon written request, copies available from: Securities and Exchange Commission; Office of Filings and Information Services; Washington, DC 20549.

Extension:

Rule 12a–5, Sec File No. 270–85, OMB Control No. 3235–0079;
Rule 15c1–7, Sec File No. 270–146, OMB Control No. 3235–0134;
Rule 15Aj–1, Sec File No. 270–25, OMB Control No. 3235–0044.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

• Rule 12a–5—Temporary Exemption of Substituted or Additional Securities.

Rule 12a–5 of the Securities Exchange Act of 1934 (the ''Act'') generally makes it unlawful for any security to be traded on a national securities exchange unless such security is registered on the exchange in accordance with the provisions of the Act and the rules and regulations thereunder.

Rule 12a–5 and form 26 were adopted by the Commission in 1936 and 1955 pursuant to sections 3(a)(12), 10(b), and 23(a) of the Act. Subject to certain conditions, rule 12a–5 affords a temporary exemption (generally for up to 120 days) from the registration requirements of section 12(a) of the Act for a new security when the holders of a security admitted to trading on a national securities exchange obtain the right (by operation of law or otherwise) to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security. The purpose of the exemption is to avoid an

interruption of exchange trading to afford time for the issuer of the new security to list and register it, or for the exchange to apply for unlisted trading privileges.

Under paragraph (d) of rule 12a–5, after an exchange has taken action to admit any security to trading pursuant to the provisions of the rule, the exchange is required to file with the Commission a notification on form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to rule 12a–5, including: (1) The name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) on which the security was or will be admitted to when-issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

The Commission generally oversees the national securities exchanges. This mission requires that, under section 12(a) of the Act specifically, the Commission receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under rule 12a–5. Without rule 12a–5 and form 26, the Commission would be unable fully to implement these statutory responsibilities.

There are currently eight national securities exchanges subject to rule 12a–5. While approximately 40 form 26 notifications are filed annually, the reporting burdens are not typically spread evenly among the exchanges.[1] For purposes of this analysis of burden, however, the staff has assumed that each exchange files an equal number (five) of form 26 notifications. Each notification requires approximately 20 minutes to complete. Each respondent's compliance burden, then, in a given year would be approximately 100 minutes (20 minutes/report × 5 reports = 100 minutes), which translates to just over 13 hours in the aggregate for all respondents (8 respondents × 100 minutes/respondent = 800 minutes, or 13⅓ hours).

Based on the most recent available information, the Commission staff estimates that the cost to respondents of completing a notification on form 26 is, on average, $14.35 per response. The staff estimates that the total annual related reporting cost per respondent is $71.75 (5 responses/respondent × $14.35 cost/response), for a total annual related cost to all respondents of $574 ($71.75 cost/respondent × 8 respondents).

Compliance with rule 12a–5 is required to obtain the benefit of the temporary exemption from registration offered by the rule. Rule 12a–5 does not have a record retention requirement *per se.* However, responses made pursuant to rule 12a–5 are subject to the recordkeeping requirements of rules 17a–3 and 17a–4 of the Act. Information received in response to rule 12a–5 shall not be kept confidential; the information collected is public information.

• Rule 15c1–7—Discretionary Accounts.

Rule 15c1–7 provides that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place.

The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. This is used by the Commission and the various self-regulatory organizations in compliance examinations to determine whether such trades have occurred.

The Commission estimates that 500 respondents collect information annually under rule 15c1–7 and that approximately 33,333 hours would be required annually for these collections.

Rule 15c1–7 does not have a record retention requirement per se. However, responses made pursuant to rule 15c1–7 are subject to the recordkeeping requirements of rules 17a–3 and 17a–4. Compliance with rule 15c1–7 is mandatory. Because the information is gathered by the Commission during compliance examinations, it is accorded confidential treatment pursuant to regulation 200.80(b)(7) under the Freedom of Information Act, 17 CFR 200.80(b)(7).

• Rule 15Aj–1—Amendments and Supplements to Registration Statements of Securities Associations.

Rule 15Aj–1 implements the requirements of sections 15A, 17, and 19 of the Act by requiring every association registered as, or applying for registration as, a national securities association or as an affiliated securities association to keep its registration statement up-to-date by making periodic filings with the Commission on form X–15AJ–1 and form X–15AJ–2.

Rule 15Aj–1 requires a securities association to promptly notify the Commission after the discovery of any inaccuracy in its registration statement or in any amendment or supplement thereto by filing an amendment to its registration statement on form X–15AJ–1 correcting such inaccuracy. The rule also requires an association to promptly notify the Commission of any change which renders no longer accurate any information contained or incorporated in its registration statement or in any amendment or supplement thereto by filing a current supplement on form X–15AJ–1. Rule 15Aj–1 further requires an association to file each year with the Commission an annual consolidated supplement on form X–15AJ–2.

The information required by rule 15Aj–1 and forms X–15AJ–1 and X–15AJ–2 is intended to enable the Commission to carry out its statutorily mandated oversight functions and to assure that registered securities associations are in compliance with the Act. This information is also made available to members of the public. Without the requirements imposed by the rule, the Commission would be unable to fulfill its regulatory responsibilities.

There is presently only one registered securities association, which registered in 1939, subject to the rule. The burdens associated with rule 15Aj–1 requirements have been borne by only one securities association since rule 15Aj–1 was adopted. Furthermore, the burdens associated with rule 15Aj–1 vary depending on whether amendments and current supplements are filed on form X–15AJ–1 in addition to an annual consolidated supplement filed on form X–15AJ–2. The Commission staff estimates the burden in hours necessary to comply with the rule by filing an amendment or a current supplement on form X–15AJ–1 to be approximately one-half hour, with a related cost of $12, per response. The Commission staff estimates the burden in hours necessary to comply with the rule by filing an annual consolidated supplement on form X–15AJ–2 to be approximately three hours, with a related cost of $96. Therefore, the Commission staff estimates that the total annual related reporting cost associated with the rule to be upwards of $96, assuming a minimum filing of an annual consolidated statement on form X–15AJ–2, with additional filings on form X–15AJ–1 correspondingly increasing such reporting cost.

[1] In fact, some exchanges do not file any notifications on form 26 with the Commission in a given year.

Compliance with rule 15Aj–1 is mandatory. Information received in response to rule 15Aj–1 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to Office of Management and Budget within 30 days of this notice.

Dated: January 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–790 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission; Office of Filings and Information Services; Washington, DC 20549.

Extension:

Rule 202(a)(11)–1, SEC File No. 270–471, OMB Control No. 3235–0532.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Certain Broker-Dealers Deemed Not To Be Investment Advisers.'' Proposed rule 202(a)(11)–1 under the Investment Advisers Act of 1940 (''Advisers Act'') would allow broker-dealers registered with the Commission to manage non-discretionary brokerage accounts without being subject to the Advisers Act regardless of the form of compensation charged those accounts provided that certain conditions are met. The rule would require that all advertisements for brokerage accounts charging an asset-based fee and all agreements and contracts governing the operation of those accounts contain a prominent statement that the accounts are brokerage accounts. This collection of information is necessary so that customers are not confused with respect to the services that they are receiving, *i.e.*, to prevent customers and prospective customers from mistakenly believing that the account is an advisory account subject to the Advisers Act. The collection will assist customers in making informed decisions regarding whether to establish accounts.

The respondents to this collection of information are all broker-dealers that are registered with the Commission. The Commission has estimated that the average annual burden for ensuring compliance with the disclosure element of the rule is 5 minutes per broker-dealer taking advantage of the rule. If all of the approximately 8,100 broker-dealers registered with the Commission took advantage of the rule, the total estimated annual burden would be 673 hours (.083 hours × 8,100 brokers).

The proposed rule imposes no additional requirements regarding record retention. The collection of information requirements under the proposed rule is mandatory. Any information received by the Commission related to the proposed rule would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–792 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47128; File No. SR–Amex–2002–100]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Renumber Footnotes in the Member Fee Schedule

January 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2002 the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to renumber footnotes in the Member Fees section of the Exchange's Member Fee Schedule.

The proposed fee schedule is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 26, 2002, the Exchange filed SR–Amex–2002–78 pursuant to Section 19(b)(3)(A) of the Act[3] to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

temporarily waive Associate Member and Electronic Access fees for broker/dealer firms that currently do not have electronic access to the Amex Order File.[4] The Exchange is proposing to renumber footnotes 4 and 5 to the Member Fee Schedule to accommodate footnote 3 which was inadvertently dropped in SR–Amex–2002–78 but approved by the Commission on April 16, 2002.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(4)[7] of the Act in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] Securities Exchange Act Release No. 46731 (October 28, 2002), 67 FR 67226 (November 11, 2002).

[5] Securities Exchange Act Release No. 45764 (April 16, 2002), 67 FR 19783 (April 23, 2002), approving SR–Amex 2002–10.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–100 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–794 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47141; File No. SR–Amex–2002–115]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the Suspension of Exchange Transaction Charges for Certain Exchange-Traded Funds

January 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2002, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until January 31, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

AMEX Equity Fee Schedule

I. Transaction Charges

No change.

II. Regulatory Fee

No Change.

Notes: 1. and 2. No change.

3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

DIA—DIAMONDS®
QQQ—Nasdaq-100® Index Tracking Stock
SPY—SPDRs®
IVV—iShares S&P 500
MDY—MidCap SPDRs
XLY—Select Sector SPDR-Consumer Discretionary
XLP—Select Sector SPDR-Consumer Staples
XLE—Select Sector SPDR-Energy
XLF—Select Sector SPDR-Financial
XLV—Select Sector SPDR-Health Care
XLI—Select Sector SPDR-Industrial
XLB—Select Sector SPDR-Materials
XLK—Select Sector SPDR-Technology
XLU—Select Sector SPDR-Utilities
BHH–B2B Internet HOLDRs™
BBH—Biotech HOLDRs
BDH—Broadband HOLDRs
EKH—Europe 2001 HOLDRs
1AH—Internet Architecture HOLDRs
HHH—Internet HOLDRs
IIH—Internet Infrastructure HOLDRs
MKH—Market 2000+ HOLDRs
OIH—Oil Service HOLDRs
PPH—Pharmaceutical HOLDRs
RKH—Regional Bank HOLDRs
RTH—Retail HOLDRs
SMH—Semiconductor HOLDRs
SWH—Software HOLDRs
TTH—Telecom HOLDRs
UTH—Utilities HOLDRs
WMH—Wireless HOLDRs
SHY—iShares Lehman 1–3 Year Treasury Bond Fund
IEF—IShares Lehman 7–10 Year Treasury Bond Fund

TLT—iShares Lehman 20+ Year Treasury Bond Fund
LQD—iShares GS $ InvesTop Corporate Bond Fund
TFT—Treasury 1 FITR ETF
TOU—Treasury 2 FITR ETF
TFI—Treasury 5 FITR ETF
TTE—Treasury 10 FITR ETF

Until [December 31, 2002] *January 31, 2003*, transaction charges also have been suspended in SHY, IEF, TFT, TOU, TFI and TTE for specialist, Registered Trader and broker dealer orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is extending until January 31, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension in such charges until November 30, 2002 [3] and December 13, 2002.[4]

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the 1934 Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [5] in general, and furthers the objectives of section 6(b)(4) [6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-trade funds that are the subject of this filing have been previously filed with the Commission.[9] Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–115 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–844 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR-Amex-2002–91).

[4] *See* Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR-Amex-2002–98).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *See supra* notes 3 and 4.

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47139; File No. SR–Amex–2002–109]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to Dow Jones & Company Liability Disclaimer

January 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 902 to include the Dow Jones & Company, Inc. in the disclaimer provisions of the Rule. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Dow Jones & Company, Inc. compiles, calculates and maintains stock indexes in which it owns ''intellectual property'' rights such as trademark, copyright, and proprietary rights. As a condition of a license agreement between the Exchange and Dow Jones & Company, Inc. in connection with the trading of options on certain exchange traded funds, the Amex is required to adopt, and maintain as part of its rules, a disclaimer, limiting the liability of Dow Jones with respect to the dissemination and calculation of its indexes. During the last couple of years, Dow Jones has entered into license agreements with State Street Bank and Trust Company (''SSGA''), and Barclays Global Investors, NA (''BGI'') to use its intellectual property rights in various indexes in connection with the issuance, marketing and promotion of certain exchange-traded open-end funds (the ''SSGA ETFs'' and the ''BGI ETFs''). The Exchange is now entering into a license agreement with Dow Jones to use the same indexes to trade Options Clearing Corporation issued options on the SSGA ETFs and the BGI ETFs.

The proposed disclaimer is similar in content to disclaimers currently in place for Standard & Poors Corporation and Morgan Stanley & Co., Incorporated in connection with other ETFs and index options. The proposed disclaimer states that Dow Jones does not guarantee the accuracy or completeness of its indexes, makes no express or implied warranties with respect to the indexes and shall have no liability for damages, claims, losses or expenses caused by errors in calculating or disseminating the indexes.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act [3] in general and furthers the objectives of section 6(b)(5) [4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–109 and should be submitted by February 5, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of section 6 of the Act.[6] The proposed liability disclaimer provision is similar to other liability disclaimers, including one related to portfolio depositary receipts in Amex Rule 1004 and others related to index options in Amex Rule 902C.

The Amex has requested that the proposed rule change be given accelerated approval pursuant to the section 19(b)(2) of the Act.[7] Since the proposed liability disclaimer is substantially similar to other liability disclaimers, the proposed disclaimer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78s(b)(5).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s.

[7] 15 U.S.C. 78s(b)(2).

raises no new regulatory issues. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[8] to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2002–109) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–845 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47132; File No. SR–NSCC–2002–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to New Clearing Fund Valuation of Deposited Securities

January 7, 2003.

On October 3, 2002, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] a proposed rule change (File No. NSCC–2002–08). Notice of the proposal was published in the **Federal Register** on December 16, 2002.[2] On January 6, 2003, NSCC amended its proposed rule change.[3] No comment letters were received.[4] For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The proposed rule change will modify Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules and Procedures to establish haircuts for securities posted by NSCC members as clearing fund collateral. Under Rule 4, NSCC members are required to make deposits to NSCC's clearing fund.[5] Rule 4 also states that NSCC, at its discretion, may permit part of a member's (with the exception of ''mutual fund/insurance services members'') clearing fund deposit to be evidenced by an open account indebtedness secured by (a) unmatured bearer bonds that are either direct obligations of or obligations guaranteed as to principal and interest by the United States or its agencies (''qualifying bonds'') and/or (b) one or more irrevocable letters of credit under certain guidelines established within NSCC's rules.[6]

In its efforts to ensure that it has adequate collateral to cover its members' obligations, NSCC has decided to haircut the value of securities deposited to meet clearing fund requirements. The proposed haircut percentages will range from 2% to 5% and will be based on the type of security deposited, its market risk, and years to maturity.[7] The proposed haircuts are similar to those currently applied by The Depository Trust Company as a part of its risk management controls. These percentages may change from time to time. Should NSCC decide to change the haircut schedule, it will communicate such changes to its participants.

NSCC intends to implement this change no sooner than thirty days after the Commission's approval of this proposed rule filing provided, however, that NSCC would like to make this change effective concurrent with the changes made pursuant to proposed rule change File No. SR–NSCC–2002–05.[8]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(A)[9] of the Act, which requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control or for which it is responsible. The Commission finds that by providing a cushion to protect against downward fluctuations in the value of securities pledged as clearing fund collateral, the proposed rule change is consistent with this obligation because it will help to ensure that NSCC has adequate clearing fund assets in the event that NSCC must liquidate the collateral of an insolvent participant.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing so that it can give its participants thirty days after approval of this filing to become compliant with the changes being made and can implement the changes to the clearing fund requirements concurrently with the changes made by SR–NSCC–2002–05.[10] The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow NSCC to give its participants thirty days to implement the changes and to implement the changes concurrently with those made by SR–NSCC–2002–05.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2002–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–846 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–M

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[8] *Id.*

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46958 (Dec. 6, 2002), 67 FR 77123.

[3] The purpose of this amendment was to conform the language of this rule filing to an earlier NSCC proposed rule change that the Commission has approved. Securities Exchange Act Release No. 46931 (Nov. 27, 2002), 67 FR 72714 (Dec. 6, 2002) [File No. SR–NSCC–2002–05]. Because this amendment is technical in nature, republication of notice is not required.

[4] This proposed rule change had a fifteen-day comment period.

[5] The amount of each member's required deposit is determined by NSCC in accordance with one or more formulas.

[6] The Commission recently approved a NSCC proposed rule change (File No. SR–NSCC–2002–05) that increased the minimum amount of cash that must be deposited by members (with the exception of ''mutual fund/insurance services members'') to satisfy clearing fund requirements and that limited the amount of a deposit that may be collateralized with letters of credit. Securities Exchange Act Release Nos. 46931 (Nov. 27, 2002) and 46389 (Aug. 21, 2002), 67 FR 55053 (Aug. 27, 2002).

[7] NSCC's proposed haircut schedule for U.S. Treasury and agency securities is: Interest bearing with remaining terms to maturity of up to 10 years—2%; Interest bearing with remaining terms to maturity in excess of 10 years—5%; Zero coupon with remaining terms to maturity of up to 5 years—2%; Zero coupon with remaining terms to maturity in excess of 5 years—5%.

[8] *Supra* note 5.

[9] 15 U.S.C. 78q–1(b)(3)(A).

[10] *Supra* note 5.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47129; File No. SR–NYSE–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend a Pilot With Respect to Amendments to Rule 431 Relating to Margin Requirements for Security Futures Contracts

January 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2003, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal is to extend until March 6, 2003, the effectiveness of amendments to Rule 431 relating to margin requirements for Security Futures Contracts (''SFCs''), which the Commission approved on a pilot basis for sixty days (the ''Pilot'') on November 7, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 23, 2002, the Exchange filed a proposed rule change with the Commission to amend Rule 431 with regard to SFCs. On November 6, 2002, the Exchange filed an amendment with the Commission to the proposed rule change.[6] This amendment was filed as a sixty-day pilot, and approved by the Commission on November 7, 2002,[7] effective through January 6, 2003.

The Exchange proposes to extend this Pilot for an additional sixty days (from January 6, 2003 until March 6, 2003) in order to allow the Pilot to continue in effect on an uninterrupted basis and to permit customers to continue trading SFCs in securities accounts while the Exchange considers the comments it has received on the Pilot.

2. Statutory Basis

The Exchange believes that the basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) of the Exchange Act[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is designed to accomplish these goals by permitting customers to trade SFCs in securities accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has received written comments on the original proposed rule change that was filed with the Commission on October 23, 2002 and amended on November 6, 2002. The Exchange is currently considering such comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally must not become operative prior to 30 days after the date of the filing. In addition, a self-regulatory organization filing a proposed rule change under Rule 19b–4(f)(6)(iii) normally must give the Commission written notice of its intent to file the proposed rule change five days prior to the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive both the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to allow the Pilot to continue in effect on an uninterrupted basis and for the Exchange to consider comments it has received on the Pilot.

The Commission believes it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NYSE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 5, 2002 (''Amendment No. 1''). Amendment No. 1 replaced the original rule filing (SR–NYSE–2002–53 (October 23, 2002)) in its entirety. Amendment No. 1 also proposed that the changes be effective for a sixty-day pilot, and requested accelerated approval of the proposed rule change.

[7] *See* Securities Exchange Act Release No. 46782 (November 7, 2002), 67 FR 69052 (November 14, 2002) (SR–NYSE–2002–53).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

immediately operative.[11] Accelerating the operative date and waiving the pre-filing requirement should permit the Exchange to permit customers to continue to trade SFCs in securities accounts on an uninterrupted basis while the Exchange considers comments it has received on the Pilot. The Commission notes that the Exchange anticipates filing a new proposed rule change to adopt the Pilot on a permanent basis. Accordingly, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR–NYSE–2003–01 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–793 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47131; File No. SR–PCX–2002–73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

January 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its Schedule of Fees and Charges by making a technical change to its DEA Regulatory fees. In addition, the Exchange, through its wholly-owned subsidiary PCX Equities, Inc. is proposing to amend its Schedule of Fees and Charges to make a technical change to its DEA Regulatory fees. The text of the proposed rule change is below. New text is italicized; deleted text is in brackets.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

PCX General membership fees:						
Regulatory fees:						
*	*	*	*	*	*	*
DEA Fee [1]	$2,000 monthly fee per firm[1]. $250 annual fee per trader[1]. $75 one-time registration fee per trader[1]. $250 per quarter for firms engaging in non-public business.					

[1] These fees will apply to member organizations for which the Exchange is the Designated Examining Authority. Member Organizations that can demonstrate that at least 25% of their income, as reflected on the most recently submitted FOCUS report, was derived from on-floor activities will be exempt from these charges.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

Archipelago Exchange:						
Other Fees and Charges						
Regulatory Fees:						
*	*	*	*	*	*	*
DEA Fee	$2,000 monthly fee per firm. $250 annual fee per trader. $75 one-time registration fee per trader. [$250 per quarter for firms engaging in non-public business].					

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make the following technical changes to its Schedule of Fees and Charges in order to correct the fee schedule and accurately reflect the DEA fees that the Exchange intends to charge with respect to its options and equities businesses. With respect to the options DEA fees, the current fees schedule includes a footnote that provides an exemption of such fees for Member Organizations that demonstrate that at least 25% of their income was derived from on-floor activities. This footnote and the exemption were not, however, intended to apply to the $250 per quarter fee for firms engaging in non-public business. The Exchange proposes to move the footnote in order to have the fee schedule reflect the Exchange's intent as described herein. With respect to the equities DEA fee, the Exchange included a $250 per quarter fee for firms engaging in non-public business; however, as this fee is not applicable to the market structure of the Archipelago Exchange, the Exchange erred in including this fee in the schedule. The Exchange proposes to delete this reference.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–2002–73 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–795 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47143; File No. SR–PCX–2002–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to a Stay of a Committee Action

January 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19–4 thereunder,[2] notice is hereby given that on April 9, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On December 31, 2002, PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to adopt an interim stay provision in connection with its rules regarding review of committee actions.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

Request for a Stay of a Committee Action

Rule 11.7(d). *(1) An aggrieved person seeking review of a committee decision may request a stay of the decision pending a hearing and review by the Board Appeals Committee. The request for a stay must include a $500 stay fee along with a concise statement of the basis for the stay which must be separate from, and in addition to, a statement of the basis for the review of the complained of action. Applicants*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the PCX's original 19b–4 filing in its entirety.

seeking a stay must file the request with the Office of the Corporate Secretary by the earlier of ten (10) business days after the committee renders its decision or forty-eight (48) hours before the committee implements action. The Exchange will not be required to consider a request for a stay made within the 48 hours before a committee implements action.

(2) A stay of a committee action may be granted in only those cases where the aggrieved person has made a showing, based solely on the evidence and information presented in the application for a stay, that: (A) there is a likelihood the applicant will prevail on the merits on review; (B) without a stay, the applicant is likely to suffer irreparable injury; (C) it is likely that there will not be substantial harm to other parties if a stay is granted; and (D) the issuance of a stay is likely to serve the interests of the Exchange or an identified public interest.

(3) The Chair of the Board Appeals Committee will designate a single Board Appeals Committee member to rule on a request for a stay. The designated Board of Appeals Committee member may summarily render a decision on the request for a stay based solely on the documents submitted in support of, and in opposition to, the request for a stay. In evaluating the merits of a stay application, the Committee member will only consider matters relevant to the issuance of the stay, not the underlying complaint. The decision of the Committee member whether to grant a stay may not be appealed under Rule 10.

[Rule 11.7(d)–11.7(n)]*Rule 11.7(e)–11.7(o)*—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Board of Governors delegates certain powers and duties to committees that administer the provisions of the Constitution and the Rules of the Exchange.[4] The rules of the Exchange provide that persons aggrieved by committee decisions (other than disciplinary matters) may seek review of the decisions subject to the procedural prerequisite of PCX Rule 11.7 (Hearing and Review of Committee Action). PCX represents that, while the rule does not expressly provide a right to interim relief of committee decisions, applicants seeking such relief routinely request that the Exchange stay further action pending review. In the absence of an express policy or procedures relating to interim relief, the Exchange has evaluated the merits of stay applications on a case-by-case relying upon the guidelines that are used by the Commission in reviewing stay applications of self-regulatory organization actions.[5] As a consequence of the Exchange's *ad hoc* review, the Exchange believes that applicants are either not aware that they have a right to interim relief or they are not familiar with the criteria that they must satisfy in seeking a stay.

The Exchange therefore proposes to clearly set forth the criteria and procedures necessary to request a stay of committee action. The proposed new Exchange rule will set forth four factors that the Exchange will consider when evaluating the merits of a stay application: (1) Whether there is a likelihood that the applicant will prevail on the merits of the appeal; (2) that without a stay, the applicant is likely to suffer irreparable injury; (3) that it is likely there will not be substantial harm to other parties if the stay is granted; and (4) that the issuance of a stay is likely to serve in the interests of the Exchange or an identified public interest.[6] The Exchange represents that the applicant must prove each of these factors based solely on the evidence and information presented in the application for a stay.

The proposed new Exchange rule will also clarify the procedures that an applicant must satisfy in seeking a stay. The proposed rule specifies that an applicant must pay a $500 fee in order to request a stay. The fee will be used to cover a portion of Exchange expenses including the allocation of staff time in processing a request for a stay. The proposal also provides that applicants must request a stay by the earlier of ten business days after a committee renders its decision or forty-eight hours before the committee implements action. From time to time, the Exchange represents that it may be required to implement a particular committee decision immediately without leaving sufficient time for an aggrieved party to request a stay of action. According to the Exchange, this situation occurs, for example, when the Exchange must identify a particular Lead Market Maker to trade a new option on the following business day, or when the Options Floor Trading Committee makes *ad hoc* trading decisions on the trading floor regarding Auto-Ex decisions pursuant to PCX Rule 6.87. In those unique situations, the Exchange notes that the aggrieved party will not have an opportunity to stay the action, but will be able to appeal the committee decision pursuant to PCX Rule 11.7. The Exchange also represents that it will not be required to consider a request for a stay made within the forty-eight hours before a committee implements action.

The proposed new Exchange rule will also provide that the Exchange's Board Appeals Committee may render a decision summarily based solely on the documents submitted in support of, and opposition to, the request for stay. In the event that the Board Appeals Committee denies the request for a stay, the Board Appeals Committee will state the reasons for its denial and state facts that support its decision.[7] The Exchange believes that these procedures will guide applicants through the stay process and will provide the Exchange's Board Appeals Committee with a uniform standard by which to judge the merits of an application for interim relief. The proposed new Exchange rule will not apply to disciplinary matters and will not affect an aggrieved person's underlying right to appeal a committee decision.

2. Statutory Basis

The Exchange believes that this proposal, as amended, is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance

[4] *See* PCX Rule 11.4.

[5] *See* 17 CFR 201.401(d); *see also* Order Preliminarily Considering Whether to Issue Stay *Sua Sponte* and Establishing Guidelines for Seeking Stay Applications, Securities Exchange Act Release No. 33870 (April 7, 1994).

[6] The Exchange represents that it relies on the Commission's guidelines in proposing these factors.

[7] The Exchange represents that the Board Appeals Committee will notify the applicant of its denial of a request for a stay, as well as the reasons for its denial. Telephone conversation between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on January 8, 2002.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

competition and to protect investors and the public interest by standardizing the method by which stays of committee decisions are made. The Exchange also believes that this proposal, as amended, is consistent with Section 6(b)(4) of the Act [10] because it provides for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment No. 1 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–20 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–842 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(4).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47140; File No. SR–Phlx–2002–76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Certain Rules Governing Participation in Crossing Transactions Effected on the Exchange

January 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend certain Phlx Rules governing participation in crossing transactions effected on the Exchange. Specifically, the Phlx proposes to amend Phlx Rule 126, adding Supplementary Material (h) instituting an alternative procedure for crossing certain orders of 10,000 shares or greater (the ''Alternative Procedure''). In addition, the Phlx proposes to amend Phlx Rule 229B, to allow specialists and floor brokers on the Exchange's equity floor to take advantage of the Alternative Procedures electronically.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Crossing'' Orders

Rule 126. When a member has an order to buy and an order to sell the same security, he must offer such security at a price which is higher than his bid by the minimum variation permitted in such security before making a transaction with himself.

Supplementary Material

(a)–(g) No Change.

(h) If prior to presenting a cross transaction involving 10,000 shares or more, a member requests that the specialist post the current market for the security (''Updated Quotation''), the member may execute a cross transaction:

(i) at the Updated Quotation, if both sides of the cross transaction are agency orders and the Updated Quotation contains no agency orders; or

(ii) between the Updated Quotation, without interference by another member. In no event shall an agency order on the book having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

* * * * *

[Order Entry Window] ***Alternative Electronic Order Entry***

Rule 229B. *(a) Floor Brokers and Specialists may elect to enter orders through an order entry window (the ''Order Entry Window'' or ''OEW''), which will route orders to the appropriate specialist, in accordance with Rule 229A, with all OEW orders treated as Non-Directed Orders, as that term is defined in Rule 229A. Specialists may enter orders only in those stocks that they have been approved to trade as a specialist by the Equity Allocation, Evaluation and Securities Committee. Orders sent through the OEW will be displayed to the specialist for a period of time to be determined by the Exchange. During that time, the specialist can choose to interact with the OEW order. At the end of the time period, absent previous specialist action, the OEW order will be automatically executed or cancelled.*

(b) Specialists and Floor Brokers may enter cross transactions electronically in accordance with the Phlx Rule 126(h).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and

Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to better allow members to compete for new and retain existing order flow in large crossed orders on the Phlx equity floor through use of the Alternative Procedures.[3] The Alternative Procedures would allow a member with an order to buy and an order to sell the identical number of shares of the same security to cross those orders without interference by another member under certain circumstances.[4] In order to use the Alternative Procedures, the member attempting to cross without interference by another member must satisfy a number of preconditions. First, the potential cross must involve orders of greater than 10,000 shares. Second, prior to introducing the cross, the member attempting to cross must request that the specialist in the security post the current market for the security (the ''Updated Quotation''). Upon receiving the Updated Quotation, the member may execute the cross transaction without interference by another member either (1) at the Updated Quotation, if both sides of the cross transaction are agency orders[5] and the Updated Quotation contains no agency orders or (2) between the Updated Quotation in any other case.[6] If either side of the cross would take place outside the Updated Quotation or at the Updated Quotation, for crosses where one or both sides of the cross transaction are non-agency orders or the Updated Quotation contains an agency order, then member may not cross utilizing the Alternative Procedures.[7]

In addition, the Exchange intends to permit members to enter crosses electronically subject to the Alternative Procedures. Upon electronic notification of the cross, the specialists in that security will be requested to submit an Updated Quotation.[8] The member's cross will be compared with the Updated Quotation, if any, and will either be executed pursuant to the Alternative Procedures or the member will be notified that the cross did not take place.

In contrast to this proposal, under current Phlx Rules pertaining to priority, if a member presents a crossing transaction, another member may participate, or ''break up,'' the transaction, by offering (after presentation of the proposed crossing transaction) to improve one side of the transaction by the minimum price variation. The member presenting the cross is then effectively prevented from consummating the transaction as a ''clean cross,'' which may be to the detriment of the member's customer.[9] The Exchange notes that the minimum price variation is one penny, making it relatively inexpensive for another Exchange member to break up the crossing transaction by simply improving one side or the other by one penny.

In a decimal pricing environment, the Exchange's Floor Procedure Committee is concerned that a portion of the crossing business and corresponding Exchange volume could evaporate unless members and their customers receive the protection offered by the Alternative Procedures. The Exchange believes that the Alternative Procedures strike a balance of interests of those members who are impacted by crossing transactions. Members attempting to execute crosses for their customers may be interested, on behalf of their customers, in obtaining a rapid execution of their order at a single price. Members submitting Updated Quotations may be interested in executing against with a portion of one side or the other of the cross because they see this as a favorable trade. This proposal allow both interests to be fulfilled by streamlining the crossing procedures while retaining the right of members to represent their best bid or offer through their response to the request for an Updated Quotation. It also protects the priority of agency orders by requiring that requiring that in no event shall an agency order in the book, having time priority, remain unexecuted after any other order at its price has been effected.

2. Statutory Basis

The Exchange believes that its proposal to amend certain Phlx Rules governing participation in crossing transactions effected on the Exchange is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[3] Crossed orders or crosses are two orders, one to buy and one to sell the identical number of shares of the same security, which a member is brokering for his or her customers. This proposed rule change effects crosses of 10,000 shares or larger.

[4] The proposed addition of Supplementary Material (h) to Phlx Rule 126 does not preclude Exchange members from choosing to cross such orders under another provision of Phlx Rule 126.

[5] Agency orders are orders that are not for the account of brokers or dealers.

[6] As with all other trading on the Exchange, members must adhere to the trading restrictions contained in Section 11(a) of the Act, 15 U.S.C. § 78k(a), and Rules 11a–1 *et. seq.*, 17 CFR 240.11a–1 *et. seq.,* pertaining to members trading on the Exchange floor for their own account.

[7] The unavailability of the Alternative Procedures does not restrict how a member may then continue to represent the orders that otherwise would have been crossed. For instance, a member may choose to execute part of one of the cross against the trading interest that caused the unavailability of the Alternative Procedures and then attempt to execute the remaining portion of the cross using the Alternative Procedures. A member could also decide to seek execution for the cross in another market.

[8] In a telephone conference between John Dayton, Assistant Secretary and Counsel, Phlx, and Alton Harvey, Chief, Office of Market Watch, and Mary N. Simpkins, Special Counsel, Division of Market Regulation, Commission, on January 7, 2003, the Phlx clarified that as with manual, in-person use of the Alternative Procedures, a member attempting to cross electronically using the Alternative Procedures will use the Exchange's trading systems to request that the specialists submit an Updated Quotation.

[9] Some institutional customers prefer executing large crossing transactions at a single price and are willing to forego the opportunity to achieve the piecemeal price improvement that might result from the break up of the cross transaction by another Exchange member. Of course, the member will still retain the ability to present both sides of the order at the post if the customers so desire.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR-Phlx-2002–76 and should be submitted by February 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–843 Filed 1–14–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S7 covers the Office of the Deputy Commissioner for Human Resources. Notice is hereby given that subchapter S7C, the Office of Labor-Management and Employee Relations is being amended to reflect the establishment of three centers. The new material and changes are as follows:

Section S7C.10 The Office of Labor Management and Employee Relations—(Organization):

Delete B.

Retitle:

A. The ''Director, Office of Labor-Management and Employee Relations'' to the ''Associate Commissioner, Office of Labor-Management and Employee Relations (S7C).

Reletter C to B:

B. The Immediate Office of the Associate Commissioner, Office of Labor-Management and Employee Relations (S7C).

Establish:

C. The Center for Program Policy, Automation and Training (S7CC).

D. The Center for Operations (S7CE).

E. The Center for Negotiation (S7CG).

Section S7C.20 The Office of Labor Management and Employee Relations—(Functions):

Delete:

B.

C., Line 5, starting with ''The functions of the office include the following:'' and items 1 through 10.

Reletter:

C. to B.

Retitle:

A., Line 1 and B., Lines 1 and 2 from ''The Director, Office of Labor-Management and Employee Relations'' to ''the Associate Commissioner, Office of Labor-Management and Employee Relations''.

B., Line 3, from ''the Director'' to the ''Associate Commissioner''

B., Line 4, from ''the Human Resources Manager'' to ''the Deputy Associate Commissioner''.

Establish:

C. The Center for Program Policy, Automation, and Training (S7CC).

1. Formulates SSA program policy, guidance, and direction in the development, administration and evaluation of a comprehensive national program in the areas of labor-management relations, performance-management, disciplinary and adverse actions, and SSA grievances.

2. Designs and implements processes to monitor and evaluate implementation of government-wide and SSA priorities relative to SSA's national labor and employee relations programs.

3. Develops and evaluates SSA policies and programs involving labor-management relations, disciplinary and adverse actions, performance-based actions, grievances, and appeals.

4. Researches, compiles, and analyzes information on the granting and usage of union official time, grievances, adverse and disciplinary actions, and third party proceedings. Establishes and maintains automated data bases for information management to monitor and analyze emerging trends and compliance with SSA policy, laws, rules and regulations relating to labor and employee relations.

5. Conducts statutory review of all Memoranda of Understanding negotiated Agency-wide. Administers and maintains arbitration panels.

D. The Center for Operations (S7CE).

1. Provides technical guidance in developing, implementing and administering cooperative labor-management and employee relations programs throughout SSA.

2. Administers SSA employee relations programs involving disciplinary and adverse actions, performance-based actions, SSA grievances, and appeals.

3. Provides technical and advisory services to management for exercising management rights and discharging SSA's obligations under labor and employee relations statutes, laws, executive orders, regulations and negotiated agreements.

4. Works with managers, labor organizations, and union officials throughout SSA to develop and maintain plans, programs, and procedures necessary to institutionalize sound labor-management relations and more effective and efficient dealings between the parties.

5. Provides training, advice, and direction to supervisors, managers, and other management personnel in SSA components on the proper interpretation and application of negotiated agreements, 5 U.S.C. 71, and employee relation's laws and regulations.

6. Coordinates activities of field and component labor relations staffs to ensure uniform implementation of national labor and employee relations policies.

E. The Center for Negotiation (S7CG).

1. Negotiates, administers, interprets and implements SSA national labor agreements which include pre-negotiation activities, team preparation, advisory services and problem resolution.

2. Negotiates national midterm contractual issues with the recognized bargaining unit(s).

3. Provides technical and advisory services and expertise to management in establishing management negotiating positions and for representation in third-party proceedings.

4. Maintains files of case law which effect contracts and researches bargaining history relevant to establishing management's position at

[12] 17 CFR 200.30–3(a)(12).

third-party proceedings and negotiations.

5. Represents or coordinates SSA representation in unfair labor practice complaints before the Federal Labor Relations Authority, bargaining matters before the Federal Mediation and Conciliation Service impasse proceedings before the Federal Services Impasses Panel, national-level grievances before arbitrators, management-initiated actions under appeal to the Merit Systems Protection Board and employee claims before unemployment compensation boards.

6. Provides technical advice and assistance to SSA management on non-bargaining unit SSA grievances.

7. Facilitates issues and generates guidance at the national, regional and local levels. Provides training and assists in resolving issues at all levels.

Dated: January 2, 2003.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 03–764 Filed 1–14–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 20, 2002 [67 FR, page 59326]. No comments were received.

DATES: Comments must be submitted on or before February 14, 2003 to: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Competition and Policy Analysis Division, Office of Aviation Analysis; Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002, Telephone (202) 366–5420.

SUPPLEMENTARY INFORMATION: Office of the Secretary (OST).

Title: Passenger Manifest Information.

OMB Control Number: 2105–0534.

Affected Public: U.S. and foreign direct air carriers.

Annual Estimated Burden: 1.05 million hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 9, 2003.

Michael A. Robinson,

Clearance Officer, Department of Transportation.

[FR Doc. 03–825 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension without change for a currently approved information collection.

DATES: Comments on this notice must be received by February 14, 2003: attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mrs. Roberta Fede, Committee Management Officer, Executive Secretariat, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone (202) 366–9764.

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

OMB Control Number: 2105–0009.

Affected Public: Individuals who have contacted DOT to indicate an interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Annual Estimated Burden: 35 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 9, 2003.

Michael A. Robinson,

Information Resource Management, Department of Transportation.

[FR Doc. 03–826 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to amend a system of records.

SUMMARY: DOT intends to establish a system of record under the Privacy Act of 1974.

EFFECTIVE DATE: February 24, 2003. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), *Yvonne.Coates@ost.dot.gov* (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of

records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

DOT/TSA 010

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM NAME:

Aviation Security Screening Records.

SYSTEM LOCATION:

Records are maintained at the Office of National Risk Assessment, Transportation Security Administration (TSA), 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals traveling to, from, or within the United States (U.S.) by passenger air transportation; individuals who are deemed to pose a possible risk to transportation or national security, a possible risk of air piracy or terrorism, or a potential threat to airline or passenger safety, aviation safety, civil aviation, or national security.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passenger Name Records (PNRs) and associated data; reservation and manifest information of passenger carriers and, in the case of individuals who are deemed to pose a possible risk to transportation security, record categories may include: risk assessment reports; financial and transactional data; public source information; proprietary data; and information from law enforcement and intelligence sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114, 44901, and 44903.

PURPOSE(S):

The system will be used to facilitate the conduct of an aviation security-screening program, including risk assessments to ensure aviation security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed from this system as follows:

(1) To appropriate Federal, State, territorial, tribal, local, international, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where TSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) To contractors, grantees, experts, consultants, agents and other non-Federal employees performing or working on a contract, service, grant, cooperative agreement, or other assignment from the Federal government for the purpose of providing consulting, data processing, clerical, or other functions to assist TSA in any function relevant to the purpose of the system.

(3) To Federal, State, territorial, tribal, and local law enforcement and regulatory agencies—foreign, international, and domestic—in response to queries regarding persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(4) To individuals and organizations, in the course of enforcement efforts, to the extent necessary to elicit information pertinent to the investigation, prosecution, or enforcement of civil or criminal statutes, rules, regulations or orders regarding persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(5) To a Federal, State, or local agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(6) To the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings.

(7) To the Department of State, or other Federal agencies concerned with visas and immigration, and to agencies in the Intelligence Community, to further those agencies' efforts with respect to persons who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(8) To international and foreign governmental authorities in accordance with law and formal or informal international agreements.

(9) In proceedings before any court, administrative, adjudicative, or tribunal body before which TSA appears, when (a) TSA or (b) any employee of TSA in his/her official capacity, or (c) any employee of TSA in his/her individual capacity where TSA has agreed to represent the employee, or (d) the U.S. or any agency thereof, where TSA determines that the proceeding is likely to affect the U.S., is a party to the proceeding or has an interest in such proceeding, and TSA determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, TSA determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(10) To airports and aircraft operators, to the extent the disclosure is deemed required in the interests of transportation security.

(11) To the National Archives and Records Administration (NARA) in connection with records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer at the Office of National Risk Assessment in a secure facility. The records are stored on magnetic disc, tape, digital media, and CD-ROM, and may be retained in hard copy format in secure file folders. The computer system from which records could be accessed is policy and security based with real-time auditing.

RETRIEVABILITY:

Data are retrievable by the name or other identifying information of the individual, such as flight information.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable rules and policies, including the Department's automated systems security and access policies. The computer system from which records could be accessed is policy and security based, meaning the access is limited to those individuals who require it to perform their official duties. It also maintains real-time auditing of individuals who access the system. Classified information is appropriately stored in a secured facility, databases, and containers and in accordance with other applicable requirements, including those pertaining to classified documents.

RETENTION AND DISPOSAL:

A request is pending for NARA approval for the retention and disposal of records in this system. For individuals who are deemed to pose a possible risk to transportation security, TSA is requesting that those records may be maintained for up to 50 years. For all other individuals, those records

will be purged after completion of the individual's air travel to which the record relates.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of National Risk Assessment, TSA, 400 7th St., SW., Washington, DC 20590.

NOTIFICATION PROCEDURES:

None. Pursuant to 5 U.S.C. 552a(k), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

Although the system is exempt from record access procedures pursuant to 5 U.S.C. 552a(k), U.S. citizens and Permanent Resident aliens may request access to records containing information they provided by sending a written request to the System Manager. In the case of air passengers, this data is contained in the passenger name record (PNR). The request must identify the system from which the individual is seeking records, and include a general description of the records sought, the requester's full name, current address and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

CONTESTING RECORD PROCEDURES:

U.S. Citizens or Permanent Resident Aliens who wish to contest, or seek amendment of, records containing information they provided, which is maintained in the system, should direct their written requests to the system manager listed above. Requests should clearly and concisely state what information is being contested, the reason(s) for contesting it, and the proposed amendment to the record. The request must also contain the requester's full name, current address and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

RECORD SOURCE CATEGORIES:

This system contains investigative material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

Dated: January 8, 2003.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 03–827 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Standardization of the Requirements of Airworthiness Directives that Mandate Supplemental Structural Inspection Documents

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting which is being held by the Federal Aviation Administration (FAA) to present its views and hear comments from the public concerning issues regarding standardization of the requirements of airworthiness directives for certain transport category airplanes that mandate Supplemental Structural Inspection Documents (SSID) and that address the treatment of repairs, alterations, and modifications of those certain transport category airplanes.

DATES: The meeting will be held in Seattle, Washington, on February 27, 2003, beginning at 8:30 a.m.

REGISTRATION: Registration will begin at approximately 7:30 a.m. on Thursday, February 27, 2003. Persons planning to attend the meeting are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information.

ADDRESSES: The meeting will be held at the Seattle Marriott Sea-Tac, 3201 South 176th Street, Seattle, WA 98188; telephone (206) 241–2000. A block of guest rooms has been reserved for the meeting at the Seattle Marriott at a group rate. This block of rooms will be held until February 6, 2003. Persons planning on attending the meeting should contact the hotel directly for reservations and identify themselves as participants in the FAA Public Technical Conference to ensure proper credit.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, FAA, Airframe Branch, ANM–120L, Transport Airplane Directorate, Aircraft Certification Service, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone (562) 627–5237; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION: In October 1991, Congress enacted Title IV of Public Law 102–143, the Aging Aircraft Safety Act (AASA) of 1991, to address aging aircraft concerns. That Act instructed the FAA administrator to prescribe regulations that will ensure the continuing airworthiness of aging aircraft. As one of several responses to the AASA, the FAA issued the Aging Airplane Safety Rule (AASR) on December 6, 2002. The applicability of that rule addresses airplanes that are operated under part 121 of the Federal Aviation Regulations (14 CFR part 121), all U.S. registered multi-engine airplanes operated under part 129 of the Federal Aviation Regulations (14 CFR part 129), and all multi-engine airplanes used in scheduled operations under part 135 of the Federal Aviation Regulations (14 CFR part 135). The AASR requires the maintenance programs of those airplanes to include damage tolerance-based inspections and procedures that include all major structural repairs, alterations, and modifications (RAMs). These procedures must be established and incorporated within four years after December 8, 2003, the effective date of the AASR.

Independently of the AASR, the FAA issued AD 98–11–03 R1 (64 FR 989, January 7, 1999) for Boeing Model 727 series airplanes and AD–98–11–04 R1 (64 FR 987, January 7, 1999) for Boeing Model 737 series airplanes on December 30, 1998. Those ADs mandated later revisions of the Boeing Supplemental Structural Inspection Documents (SSID) and specifically address RAMs. Those ADs also require operators to develop damage tolerance inspection programs for all RAMs affecting principal structural elements, thereby fulfilling the intent of the AASR for those airplanes.

However, since the issuance of the SSID ADs for the Boeing Model 727 and 737 series airplanes, several problems have arisen. The FAA received many requests for alternative methods of compliance (AMOCs) to approve various inspection methods and intervals for RAMs. In the process of reviewing these requests, the FAA noted that operators were having difficulties in addressing RAMs in order to comply with those ADs. Additionally, operators were concerned that the McDonnell Douglas SSID ADs and the Boeing 727/737 SSID ADs were not standardized with regard to the treatment of RAMs. This became a concern because many of the airplane operators have a mixed fleet of Boeing and McDonnell Douglas airplanes and now had to essentially implement two different SSID programs with no apparent reason for the difference between the programs. Therefore, in April 2000 the Transport Airplane Directorate chartered a SSID Team to develop recommendations to standardize the SSID ADs regarding the treatment of RAMs. The report can be accessed at *http://www.faa.gov/certification/aircraft/transport.htm*.

Public Technical Meeting

The results from the SSID Team provided a good first step towards standardizing the FAA approach to RAMs. However, the FAA has determined that a public meeting should be held to discuss the SSID ADs and their relationship with the new AASR. The Transport Airplane Directorate is holding this public meeting to give operators the opportunity to present any concerns they may have with using the SSID ADs to address RAMs. The meeting will also give the FAA the opportunity to clarify terms in the standardized SSID ADs that may be confusing to operators. The following are some of the items that will be addressed at the upcoming public meeting:

- The relationship between the Aging Airplane Safety Rule and any future SSID ADs that address RAMs.
- The SSID Team conclusions and recommendations.
- The FAA's approach in issuing the SSID ADs for Boeing Model 727/737 series airplanes, and any of the difficulties that operators have had in addressing RAMs in accordance with the ADs. Such difficulties include the role of supplemental type certificate (STC) holders in assisting operators in developing programs for STC modifications; the effect of inspection program requirements on the routine use of structural repair manuals; and the relationship/overlap between the Repair Assessment Program and SSID ADs.
- Opinions from the public/industry on addressing RAMs in future SSID ADs.
- Opinions from the public/industry regarding alternative approaches (other than ADs) for defining specific methods of compliance to address RAMs as required by the AASR for various models of transport category airplanes.

Participation at the Public Meeting

If you wish to present any oral statements at the public meeting, you should submit your request to the FAA prior to February 14, 2003. Such requests should be submitted to the person listed under the heading **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented, as well as an estimate of time needed for the presentation. Requests received after February 14, 2003, will be considered and may be scheduled, time permitting, during the meeting. The FAA will prepare an agenda of speakers who will be available at the meeting. Every effort will be made to accommodate as many speakers as possible in the time allotted.

Meeting Procedures

The following procedures are established to facilitate the meeting:

- Attendance is open to the public, but will be limited to the space available.
- There will be no admission fee or other charge to attend or participate in the meeting. The opportunity to speak will be available to all persons, subject to availability of time.
- The meeting is designed to provide information to, and hear comments from, the public concerning issues related to the Aging Airplane Safety Rule and any future SSID ADs that address RAMs. The meeting will be conducted in an informal and nonadversarial manner; however, the FAA may ask questions to clarify a statement and to ensure a complete and accurate record.
- Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.
- Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues and, unless stated as such, should not necessarily be construed as a position of the FAA.
- An individual, whether speaking in person or in a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, additional time may be allotted.
- The FAA will try to accommodate all questions, time permitting. However, the FAA reserves the right to exclude some questions, if necessary, to present a balance of viewpoints and issues.
- The FAA will review and consider all material presented by participants at the meeting. Participants are requested to provide 10 copies of all presentation materials for distribution to the panel members. Other copies may be provided to the audience at the discretion of the participant.
- The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be made a part of the official record. Any person interested in purchasing a copy of the transcript should contact the court reporter directly at the meeting.

Issued in Renton, WA, on January 8, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–876 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Fayette County, KY

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed construction of an extension of Newtown Pike on a new alignment.

FOR FURTHER INFORMATION CONTACT: David Whitworth, Area Engineer, Federal Highway Administration, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, Kentucky 40601. Telephone 502–223–6754, Fax 502–223–6735.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Kentucky Transportation Cabinet (KYTC) and the Lexington-Fayette County Urban Government (LFCUG) will prepare an EIS for the construction of the Newtown Pike Extension from Main Street to Broadway, with a connector to Limestone at the University of Kentucky main entrance.

The EIS will be a complement to the ''Newtown Pike Extension Corridor Plan'', adopted as part of the LFCUG Comprehensive Plan and will detail environmental, social and economic impacts associated with the proposed action.

Four public meetings have been held in conjunction with the ''Corridor Plan''. All meetings have been advertised and no strong public opposition has been heard. These meetings have been used to identify significant transportation and environmental issues.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings and a public hearing will be held while preparing this EIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency reviews and comment prior to the public hearing.

The public meetings and hearing will also be a forum for public consultation and involvement on issues associated with the National Historic Preservation Act (Section 106) when appropriate. Interested persons, groups, or parties

who wish to be consulting parties under Section 106 for this project should submit a written request to the FHWA at the address provided above.

To ensure the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should also be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Evan Wisniewski,

Program Management Engineer, Federal Highway Administration.

[FR Doc. 03–877 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver allows ticket vending machine manufacturers to install the Asahi Seiko Compact Coin Dispensing Hopper and count it as domestic for purposes of Buy America compliance. It is predicated on the non-availability of the item domestically and was granted on December 9, 2002, for the period of two years, or until such time as a domestic source for this Compact Coin dispensing Hopper becomes available, whichever occurs first. This notice shall insure that the public, particularly potential manufacturers, is aware of this waiver. FTA requests that the public notify it of any relevant changes in the domestic market.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: *See* waiver below.

Dated: January 2, 2003.

Jennifer L. Dorn,

Administrator.

Mr. Roy Hollister, *General Manager, Asahi Seiko U.S.A., Inc., 6644 Paradise Road,* Las Vegas, Nevada 89119

Dear Mr. Hollister: This letter responds to your correspondence of October 4, 2002, in which you request a Buy America non-availability waiver for the Model SA–595 Compact Coin Dispensing Hopper manufactured for use in ticket vending machines. The coin dispenser at issue here is a low profile, bulk coin dispensing hopper module, a device able to hold a quantity of coins in a hopper and dispense them for ''change'' one by one in a secure and accurate manner upon electronic command. For the reasons below, I have determined that a waiver is appropriate here.

FTA's requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). However, Section 5323(j)(2)(B) states that those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation also provides that a waiver may be requested ''for a specific item or material that is used in the production of a manufactured product.'' 49 CFR 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. *See,* 49 CFR 661.7(g) and 49 CFR 661.9(d).

You state that there are no U.S. manufacturers of this component with the same operational and dimensional characteristics. This assertion is supported by a letter from GFI Genfare, a ticket vending machine manufacturer, a potential end user of this coin hopper. FTA also posted a request for comments on this matter on our website and we received no comments from domestic manufacturers of this product.

Based on the above-referenced information, I have determined that the grounds for a ''non-availability'' waiver exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), a waiver is hereby granted for manufacture of the Model SA–595 Compact Coin Dispensing Hopper for a period of two years, or until such time as a domestic source for this type of unit becomes available, whichever occurs first. In order to insure that the public is aware of this waiver, particularly potential manufacturers, it will be published in the **Federal Register**. If you have any questions, please contact Joseph Pixley at (202) 366–1936.

Very truly yours,

Gregory B. McBride,
Deputy Chief Counsel.

[FR Doc. 03–824 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver allows ticket vending machine manufacturers to install the Mars Electronics Bill Handling Unit and count it as domestic for purpose of Buy America compliance. It is predicated on the non-availability of the item domestically and was granted on December 10, 2002, for the period of two years, or until such time as a domestic source for this Bill Handling Unit becomes available, whichever occurs first. This notice shall insure that the public, particularly potential manufacturers, is aware of this waiver. FTA requests that the public notify it of any relevant changes in the domestic market.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone), or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: See waiver below.

Issued: January 2, 2003.

Jennifer L. Dorn,

Administrator.

Cassius Jones, Industry Manager, Mars Electronics International, 1301 Wilson Drive, West Chester, Pennsylvania 19380–5963

Dear Mr. Jones: This letter responds to your correspondence of August 8, 2002, in which you request an extension of a Buy American non-availability waiver for the BNA57, BNA52/54, and BSN385/39 bill handling units manufactured for use in ticket vending machines. The bill handling unit at issue here is able to accept, validate, and place in mechanical escrow banknotes of various denominations. The device also transfers these banknotes from the escrow to a vault within the ticket vending machine or returns them if the transaction is not completed. On July 21, 2000, the Federal Transit Administration granted Mars Electronics a waiver for this unit. For the reasons below, I have determined that a waiver is appropriate here.

FTA's requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). However, Section 5323(J)(2)(B) states that those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation also provides that a waiver may be requested ''for a specific item or material that is used in the production of a manufactured product.'' 49 CFR 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. See, 49 CFR 6617(g) and 49 CFR 661.9(d).

You state that there are still no U.S. manufacturers of this component with a functionally equivalent product. This assertion is supported by a market survey furnished as part of your application and conducted by Scheidt & Bachlman, a ticket vending machine manufacturer and potential end user of this component. You have also supplied a letter supporting your contentions from Cubic Transportation Systems, another

potential end user. FTA posted a request for comments on this matter on our website and received no comments from domestic manufacturers of this product.

Based on the above-referenced information, I have determined that the grounds for a ''non-availability'' waiver exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), a waiver is hereby granted by manufacture of the BNA57, BNA52/54, processing unit for a period of two years, or until such time as a domestic source of this type of unit becomes available, whichever occurs first. In order to insure that the public is aware of this waiver, particularly potential manufacturers, it will be published in the **Federal Register**. If you have any questions, please contact Joseph Pixley at (202) 366–1936.

Very truly yours,

Gregory B. McBride,
Deputy Chief Counsel.

[FR Doc. 03–823 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver allows ticket vending machine manufacturers to install the Toyocom Bill Processing Unit and count it as domestic for purposes of Buy America compliance. It is predicated on the non-availability of the item domestically and was granted on December 13, 2002, for the period of two years, or until such time as a domestic source for this Bill Processing Unit becomes available, whichever occurs first. This notice shall insure that the public, particularly potential manufacturers, is aware of this waiver. FTA requests that the public notify it of any relevant changes in the domestic market.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: See waiver below.

Dated: January 2, 2003.

Jennifer L. Dorn,

Administrator.

December 13, 2002.

Mr. Fumihiko Hagiwara,
Sales Supervisor, Toyocom U.S.A., Inc., 617 E. Golf Road, Suite 112, Arlington Heights, IL 60005

Dear Mr. Hagiwara: This letter responds to your correspondence of September 17 and October 10, 2002, in which you request a Buy America non-availability waiver for the Toyocom BV–6000 bill processing unit manufactured for use in ticket vending machines. The bill processing unit at issue here is able to accept, validate, and place in mechanical escrow up to 15 banknotes of various denominations. The device also transfers these banknotes from the escrow to a stack within a locked cashbox within the ticket vending machine. On October 4, 1996, the Federal Transit Administration granted Toyocom a waiver for the Model BV–5100 bill processing unit of which the BV–6000 is the successor. For the reasons below, I have determined that a waiver is appropriate here.

FTA's requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). However, Section 5323(j)(2)(B) states that those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation also provides that a waiver may be requested ''for a specific item or material that is used in the production of a manufactured product.'' 49 CFR 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. *See* 49 C.F.R. 661.7(g) and 49 CFR 661.9(d).

You state that there are no U.S. manufacturers of this component with the same operational and dimensional characteristics. This assertion is supported by a market survey furnished as part of your application and conducted for Toyocom by GFI Genfare, a ticket vending machine manufacturer and potential end user of this component. FTA also posted a request for comments on this matter on our website and received no comments from domestic manufacturers of this product.

Based on the above-referenced information, I have determined that the grounds for a ''non-availability'' waiver exist. Therefore, pursuant to the provisions of 49 U.S.C. § 5323(j)(2)(B), a waiver is hereby granted for manufacture of the Model BV–6000 bill and BSN385/39 bill handling units for a period of two years, or until such time as a domestic source for this type of unit becomes available, whichever occurs first. In order to insure that the public is aware of this waiver, particularly potential manufacturers, it will be published in the **Federal Register.** If you have any questions, please contact Joseph Pixley at (202) 366–1936.

Very Truly yours,

Gregory B. McBride,
Deputy Chief Counsel.

[FR Doc. 03–822 Filed 1–14–03; 8:45 am]

BILLING CODE 4910–87–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participating in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: January 3, 2003.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 03–786 Filed 1–14–03; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on February 3–4, 2003, at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC. The meeting on February 3 will convene in Room 830 at 8 a.m. and adjourn at 5:30 p.m. The meeting on February 4 will convene in Room 230 at 8 a.m. and adjourn at 4 p.m. Both meetings will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health

consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

On February 3, the Committee will review current activities and receive an update on new research. The Committee will hearing presentations on and discuss antibiotic therapy and exercise behavior therapy, Phase III of the National Gulf War Veterans Survey and treatment research concepts. Throughout the day, there will be presentations by visiting experts including, Chief of VA Research and Development, Directors of the Washington, DC and New Jersey War-Related Illness and Injury Study Centers and Dr. Hermona Soreq, Hebrew University of Jerusalem. On February 4, the Committee will hear presentations on and discuss vaccine and mechanism research concepts. The Committee will also discuss and develop recommendations and next steps. Time will be available for public comment on both days.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Committee Manager, Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing further information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: January 9, 2003.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 03–878 Filed 1–14–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 10

Wednesday, January 15, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[FV–02–710]

Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order; Termination

Correction

In rule document 03–453 beginning on page 1364 in the issue of Friday, January 10, 2003 make the following correction:

On page 1364, in the third column, under **EFFECTIVE DATE** ''February 10, 2002'' should read, ''February 10, 2003''.

[FR Doc. C3–453 Filed 1–14–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

Correction

In notice document 02–32814 beginning on page 79573 in the issue of Monday, December 30, 2002, make the following corrections:

1. On page 79573, in the third column, in the **DATES** section, in the second line, ''February 25, 2003'' should read, ''February 28, 2003''.

2. On the same page, in the same column, under the **FOR FURTHER INFORMATION CONTACT** heading, in the *Titles* section, in the fourth line, ''0702\0064'' should read, ''0702–0064''.

[FR Doc. C2–32814 Filed 1–14–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 550

[No. 2002–57]

RIN 1550–AB49

Recordkeeping and Confirmation Requirements for Securities Transactions; Fiduciary Powers of Savings Associations

Correction

In rule document 02–31005 beginning on page 76293 in the issue of Thursday, December 12, 2002, make the following correction:

§ 550.70 [Corrected]

On page 76298, in the table, in § 550.70, in the column titled ''Then'', in the second line from the bottom, ''...or file a that are notice with OTS'' should read, ''...or file a notice with OTS.''

[FR Doc. C2–31005 Filed 1–14–03; 8:45 am]

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Federal Register

Wednesday,
January 15, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7418–3]

RIN 2060–AG96

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing national emission standards for hazardous air pollutants (NESHAP) for metal can surface coating operations pursuant to section 112(d) of the Clean Air Act (CAA). The EPA estimates that there are approximately 142 major source facilities in the metal can surface coating source category that emit hazardous air pollutants (HAP), such as xylene, hexane, methyl isobutyl ketone (MIBK), ethylene glycol monobutyl ether (EGBE) and other glycol ethers, isophorone, ethyl benzene, formaldehyde, napthalene, methyl ethyl ketone (MEK), cumene, and toluene. As proposed, the standards are estimated to reduce HAP emissions by 6,160 megagrams per year (Mg/yr) (6,800 tons per year (tpy)) or by 71 percent. The reduction in HAP emissions would be achieved by requiring all major sources of HAP emissions that have metal can surface coating operations to meet the HAP emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* Submit comments on or before February 14, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, they should do so by January 27, 2003. If requested, a public hearing will be held approximately 15 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Office of Air & Radiation Docket & Information Center (6102T), Attention Docket Number A–98–41, U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center, Attention Docket Number A–98–41, U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC. You should contact Ms. Janet Eck, Coatings and Consumer Product Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–7946, to request to speak at the public hearing or to find out if a hearing will be held.

Docket. Docket No. A–98–41 contains supporting information used in developing the proposed standards. The docket is located at the Environmental Protection Agency, Office of Air & Radiation Docket & Information Center (6102T), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almódovar, Coatings and Consumer Products Group, Emissions Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–0283; facsimile number (919) 541–5689; electronic mail (e-mail) address: *almodovar.paul@.epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–98–41. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Mr. Paul Almódovar, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing.

Persons interested in attending the public hearing should also contact Ms. Eck at least 2 days in advance of the public hearing to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of the proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the Administrator, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The proposed source category definition includes facilities that apply surface coatings to metal cans and ends (including decorative tins) or metal crowns and closures. In general, facilities that apply surface coatings to metal cans are

covered under the North American Industrial Classification System (NAICS) codes listed in Table 1. However, facilities classified under other NAICS codes may be subject to the proposed rule if they meet the applicability criteria.

The table is not intended to be exhaustive, but rather provides a guide for readers regarding subcategories and entities likely to be regulated by today's action. To determine whether your coating operation is regulated by this action, you should examine the applicability criteria in 40 CFR 63.3481 of the proposed rule. If you have any questions regarding the applicability of today's action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1.—SUBCATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

Subcategory	NAICS	Examples of Potentially Regulated Entities
One- and two-piece draw and iron (D&I) can body coatings.	332431	Two-piece beverage can facility
Sheetcoatings	332431 332115 332116 332812 332999	Three-piece food can facility, two-piece D&I facility, one-piece aerosol can facility, etc.
Three-piece can assembly coatings	332431	Can assembly facility
End lining coatings	332431 332812	End manufacturing facilities

Background Information Document and Economic Impact Analysis. The Background Information Document (BID) and the Economic Impact Analysis (EIA) for the proposed rule may be obtained from the TTN WWW; the metal can manufacturing (surface coating) docket (A–98–41); the EPA Library (267–01), Research Triangle Park, NC 27711, telephone (919) 541–2777; or the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487–4650. Please refer to ''Background Information Document—National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Metal Can Manufacturing (Surface Coating) Industry'' (EPA–453/R–02–008) and the ''Economic Impact Analysis of Metal Can MACT Standards'' (EPA–452/R–02–005).

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The metal can surface coating source category was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that emit or have the potential to emit equal to or greater than 9.1 Mg/yr (10 tpy) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP emissions from both new or reconstructed and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. That level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the

better-controlled and lower-emitting sources in each source category or subcategory. For new or reconstructed sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new or reconstructed sources, but they cannot be less stringent than the average emission limit achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Impacts Do Cure HAP Have on the NESHAP?

Chemical reactions occurring during many metal can surface coating and curing operations may create compounds that are then emitted into the atmosphere. Those types of compounds are normally referred to as ''cure volatiles'' or ''cure HAP'' and may include formaldehyde and methanol (listed as HAP under section 112(b) of the CAA). In determining the MACT, we did not quantify emissions of cure HAP because there is not an EPA-approved test method for measuring those compounds. Therefore, the proposed rule would not require affected sources to account for and control emissions of cure HAP.

D. What Are the Health Effects Associated With HAP Emissions From Metal Can Surface Coating Operations?

The primary HAP emitted from metal can surface coating operations include EGBE and other glycol ethers, xylenes, hexane, MEK, and MIBK. Those compounds account for 95 percent of the nationwide HAP emissions from that source category. Other HAP emitted include isophorone, ethyl benzene, toluene, trichloroethylene, formaldehyde, and napthalene. The HAP that would be controlled with the proposed rule are associated with a variety of adverse health effects. Those adverse health effects include chronic health disorders (*e.g.*, irritation of the lungs, eyes, and mucus membranes and effects on the central nervous system), acute health disorders (*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the central nervous system), and possibly cancer.

We do not have the type of current detailed data on each of the facilities covered by the proposed emission standards for that category and on the people living around the facilities that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from those facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding those facilities. However, to the extent that adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures.

II. Summary of the Proposed Rule

A. What Source Categories and Subcategories Are Affected by the Proposed Rule?

The proposed rule would apply to you if you own or operate a metal can surface coating operation that uses at least 5,700 liters (1,500 gallons (gal)) of coatings per year and is a major source, is located at a major source, or is part of a major source of HAP emissions, whether or not you manufacture the metal can substrate. The surface coating operations themselves are not required to be major sources of HAP emissions in order for the surface coating operations at a major source facility to be covered by the proposed rule. As long as some part of the total facility is considered a major source (*e.g.*, the metal can substrate manufacturing process), the surface coating operations would be subject to the standards.

A metal can surface coating facility is any facility that coats or prints metal cans or ends (including decorative tins) or metal crowns or closures for any type of can during any stage of the can manufacturing process. It includes the coating/printing of metal sheets for subsequent processing into cans or can parts, but not the coating of metal coils for cans or can parts. (Coil coating for cans and can parts is included in the metal coil surface coating source category.) Note that the coating/printing of pails and drums falls in the miscellaneous metal parts and products surface coating source category. As explained later, we have established four subcategories in the metal can surface coating industry, including: (1) One- and two-piece D&I can body coating, (2) sheetcoating, (3) three-piece can body assembly coating, and (4) end lining. Some metal can surface coating facilities include coating operations in more than one subcategory. In those cases, the facilities would be subject to more than one emission limit.

You would not be subject to the proposed rule if your coating operation is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through the permitting authority.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to other rules. We specifically request comments on how monitoring, recordkeeping, and reporting requirements can be consolidated for sources that are subject to more than one rule.

National Emission Standards for Metal Coil Surface Coating. Facilities engaged in surface coating performed on a continuous metal substrate greater than 0.006 inches thick would be subject to the metal coil surface coating NESHAP (67 FR 39794, June 10, 2002).

National Emission Standards for Miscellaneous Metal Parts and Products Surface Coating. Surface coating of any metal parts and products not covered in any other surface coating source category, such as metal can surface coating or metal coil surface coating, would be subject to the future miscellaneous metal parts and products surface coating NESHAP, as proposed August 13, 2002 (67 FR 52780).

C. What Are the Primary Sources of Emissions and What Are the Regulated Pollutants?

HAP Emission Sources. The primary HAP emission sources in metal can surface coating operations are coating application lines, drying/curing ovens, mixing and/or thinning areas, and cleaning equipment. Coating application lines and drying/curing ovens are the largest sources of HAP emissions. Recent reformulation efforts involving the primary coatings used in metal can surface coating operations are likely to continue as a result of the proposed rule and will serve to reduce HAP emissions from these sources. Mixing and/or thinning areas and cleaning equipment are smaller HAP emission sources and work practice standards would be used to limit the HAP emissions from these sources.

Organic HAP. Available emission data collected during the development of the proposed NESHAP show that the

primary organic HAP (including cure HAP) emitted from metal can surface coating operations include EGBE and other glycol ethers, xylenes, hexane, MEK, and MIBK. Other significant organic HAP identified include isophorone, ethyl benzene, toluene, trichloroethylene, napthalene, and formaldehyde. Organic HAP emissions would be regulated by the proposed metal can surface coating rule.

Inorganic HAP. Based on information reported during the development of the proposed NESHAP, inorganic HAP, including chromium and manganese compounds, are contained in some of the coatings used by that source category and may be emitted if they are spray-applied. Inorganic HAP emissions would not be regulated by the proposed metal can surface coating rule. (*See* section III.B of this preamble for further discussion of inorganic HAP emissions from surface coating operations.)

D. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed standards for metal can surface coating define the affected source for each subcategory as the collection of all operations within a facility associated with (1) one- and two-piece D&I can body coating, (2) sheetcoating, (3) three-piece can body assembly coating, or (4) end lining. Those operations include the following: Preparation of a coating for application (*e.g.*, mixing with thinners); process equipment involving storage, transfer, handling, and application of coatings; and associated curing, and drying equipment.

The affected source does not include research or laboratory equipment or janitorial, building, or facility maintenance operations.

E. What Are the Emission Limits, Operating Limits, and Work Practice Standards?

Emission Limits. We are proposing to limit organic HAP emissions from each new or reconstructed affected source using the emission limits in Table 2 of this preamble. The proposed emission limits for each existing affected source are given in Table 3 of this preamble. You can choose from several compliance options in the proposed rule to achieve the emission limit that applies to your affected source. You could comply by applying materials (coatings and thinners) that meet the emission limit, either individually or collectively. You could also use a capture system and add-on control equipment to meet the emission limit. You could also comply by using a combination of both approaches. If you use a capture system and add-on control equipment, there are alternative control efficiency or outlet concentration limits that you may use to simplify and reduce your recordkeeping and reporting requirements. The alternative emission limits for affected sources using the control efficiency/outlet concentration compliance option are provided in Table 4 of this preamble.

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	for all coatings of this type . . .	then, you must meet the following organic HAP emission limit in kilograms HAP/liter solids (pound HAP/gal solids) [1]:
1. One- and two-piece D&I can body coating	a. two-piece beverage cans—all coatings	0.04 (0.31)
	b. two-piece food cans—all coatings	0.06 (0.50)
	c. one-piece aerosol cans—all coatings	0.08 (0.65)
2. Sheetcoating	sheetcoating	0.02 (0.17)
3. Three-piece can assembly	a. inside spray	0.12 (1.03)
	b. aseptic side seam stripes on food cans	1.48 (12.37)
	c. non-aseptic side seam stripes on food cans	0.72 (5.96)
	d. side seam stripes on general line non-food cans	1.18 (9.84)
	e. side seam stripes on aerosol cans	1.46 (12.14)
4. End lining	a. aseptic end seal compounds	0.06 (0.54)
	b. non-aseptic end seal compounds	0.00 (0.00)

[1] If you apply surface coatings of more than one type within any one subcategory, you may calculate an overall subcategory emission limit (OSEL) according to 40 CFR 63.3551(i).

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	for all coatings of this type . . .	then, you must meet the following organic HAP emission limit in kilogram HAP/liter solids (pound HAP/gal solids) [1]:
1. One- and two- piece D&I can body coating	a. two-piece beverage cans—all coatings	0.07 (0.59)
	b. two-piece food cans—all coatings	0.06 (0.51)
	c. one-piece aerosol cans—all coatings	.....
		0.12 (0.99)
2. Sheetcoating	sheetcoating	0.03 (0.26)
3. Three-piece can assembly	a. inside spray	0.29 (2.43)
	b. aseptic side seam stripes on food cans	1.94 (16.16)
	c. non-aseptic side seam stripes on food cans	0.79 (6.57)
	d. side seam stripes on general line non-food cans	1.18 (9.84)
	e. side seam stripes on aerosol cans	1.46 (12.14)

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES—Continued

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	for all coatings of this type . . .	then, you must meet the following organic HAP emission limit in kilogram HAP/liter solids (pound HAP/gal solids) [1]:
4. End lining	a. aseptic end seal compounds	0.06 (0.54)
	b. non-aseptic end seal compounds	0.00 (0.00)

[1] If you apply surface coatings of more than one type within any one subcategory you may calculate an OSEL according to 40 CFR 63.3551(i).

TABLE 4.—EMISSION LIMITS FOR AFFECTED SOURCES USING THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

If you use the control efficiency/outlet concentration option to comply with the emission limitations for any coating operation(s)	Then you must comply with one of the following by using an emissions control system to
1. In a new or reconstructed affected source	a. reduce emissions of total HAP, measured as total hydrocarbons (THC) (as carbon),[1] by 97 percent; or b. limit emissions of total HAP, measured as THC (as carbon) [1] to 20 parts per million by volume, dry (ppmvd) at the control device outlet and use a permanent total enclosure.
2. In an existing affected source	a. reduce emissions of total HAP, measured as THC (as carbon),[1] by 95 percent; or b. limit emissions of total HAP, measured as THC (as carbon),[1] to 20 ppmvd at the control device outlet and use a PTE.

[1] You may choose to subtract methane from THC as carbon measurements.

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the proposed operating limits would apply to you. Those limits are site-specific parameter limits you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures (PTE), you would establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are PTE, you would establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you would monitor the combustion temperature. For catalytic oxidizers, you would monitor the temperature immediately before and after the catalyst bed or you would monitor the temperature before the catalyst bed and implement a site-specific inspection and maintenance plan for the catalytic oxidizer. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you would monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you would monitor the outlet gas temperature from the condenser. For concentrators, you would monitor the temperature of the desorption concentrate stream and the pressure drop of the dilute stream across the concentrator.

All site-specific parameter limits that you establish must reflect operation of the capture system and control devices during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work Practice Standards. In lieu of emission standards, section 112(h) of the CAA allows work practice standards or other requirements to be established when a pollutant cannot be emitted through a conveyance or capture system, or when measurement is not practicable because of technological and economic limitations. Many metal can surface coating facilities use work practice measures to reduce HAP emissions from mixing, cleaning, storage, and waste handling areas as part of their standard operating procedures. They use those measures to decrease solvent usage and minimize exposure to workers. However, we do not have data to accurately quantify the emissions reductions achievable by the work practice measures, and it is not feasible to measure emissions or enforce a numerical standard for emissions from those operations.

Based on information received from that industry during the development of NESHAP and information available from several similar coating industries for which NESHAP have already been promulgated (aerospace manufacturing and rework, magnetic tape manufacturing, shipbuilding and ship repair, and wood furniture manufacturing), we identified a variety of work practice measures for cleaning, storage, mixing, and waste handling. If you reduce emissions by using a capture system and add-on control device, you would be required to develop and implement a work practice plan that would specify practices and procedures to ensure that, at a minimum, the elements specified below are implemented: (1) Storing all organic-HAP-containing liquids and waste materials in closed containers, (2) minimizing spills of all organic-HAP-containing materials, (3) using closed containers or pipes to transport all organic-HAP-containing materials, (4) keeping mixing vessels for organic-HAP-containing materials closed except when adding to, removing, or mixing the contents, and (5) minimizing organic HAP emissions during all cleaning operations.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan could be used to satisfy the requirement for a work practice plan.

Operations During Startup, Shutdown, or Malfunction. If you use a capture system and add-on control device for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during

periods of startup, shutdown, or malfunction of the capture system and add-on control device.

General Provisions. The General Provisions (40 CFR part 63, subpart A) also would apply to you as indicated in the proposed standards. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The proposed standards refer to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed standards, all of the applicable General Provisions requirements would apply to you.

F. When Must I Comply With the Proposed Rule?

Existing affected sources must comply within 3 years of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New or reconstructed affected sources must comply immediately upon initial startup or on [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later. A metal can surface coating affected source is existing if its construction or reconstruction of the facility commenced on or before January 15, 2003. An affected source is new if construction commenced after January 15, 2003. A metal can surface coating affected source is reconstructed if it meets the definition of reconstruction in 40 CFR 63.2 and reconstruction is commenced after January 15, 2003. The effective date is [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

G. What Are the Testing and Initial Compliance Requirements?

Initial Compliance. Compliance with the emission limits is based on a 12-month rolling average. Therefore, for new or reconstructed affected sources using the compliant materials option or the emission rate without add-on controls option, the proposed initial compliance period begins on the first day of the first month following initial startup of the affected source or the effective date, whichever is later, and ends on the last day of the 12th month following initial startup or the effective date, whichever is later. For new or reconstructed affected sources that use a capture system and control device, the initial compliance period begins on the first day of the first month following the initial performance test and ends on the last day of the 12th month following the initial performance test. For all new or reconstructed affected sources, any partial month data between initial startup or initial performance test and initial compliance period must be added to the first month data. For existing affected sources, the proposed initial compliance period begins on the first day of the month in which the compliance date falls and ends on the last day of the 12th month following the compliance date.

Being in compliance means that the owner or operator of the affected source meets the requirements to achieve the proposed emission limitations by the end of the initial compliance period. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance with the 12-month rolling average for that period. If the affected source does not meet the applicable limits and other requirements, it is out of compliance for the entire initial compliance period. We welcome specific comments on the compliance dates and the data collection activities required for the initial compliance period.

Emission Limits. There are several proposed options for complying with the proposed emission limits, and the testing and initial compliance requirements vary accordingly.

Option 1: Compliance Based on the Compliant Material Option. If you demonstrate compliance based on the compliant material option, you would determine the mass of organic HAP in all coatings and thinners used each month during the initial compliance period and the volume fraction of coating solids in all coatings used each month during the initial compliance period. To determine the mass of organic HAP in coatings and thinners and the volume fraction of coating solids, you could use either manufacturer's data or test results using the test methods listed below. You may use alternative test methods provided you get EPA approval in accordance with 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes.

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- The proposed rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP. If you choose that option, then use Method 24 of 40 CFR part 60, appendix A, to determine nonaqueous volatile matter.
- For volume fraction of coating solids, use either information from the supplier or manufacturer of the material, ASTM Method D2697–86(1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the compliant materials option, you would be required to demonstrate that the organic HAP content of each coating meets the applicable emission limits and that you use no organic-HAP-containing thinners.

Option 2: Compliance Based on the Emission Rate Without Add-On Controls Option. If you demonstrate compliance based on the emission rate without add-on controls option, you would determine the mass of organic HAP in all coatings and thinners used in each coating type segment each month during the initial compliance period and the volume fraction of coating solids in all coatings in each coating type segment used each month during the initial compliance period.

To determine the mass of organic HAP in coatings and thinners and the volume fraction of coating solids, you could use either manufacturer's data or test results using the test methods listed below. You may use alternative test methods provided you get EPA approval in accordance with 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes.

- For organic HAP content, use Method 311.
- The proposed rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP. If you choose that option, use Method 24 to determine nonaqueous volatile matter.
- For volume fraction of coating solids, use either information from the supplier or manufacturer of the material, ASTM Method D2697–86(1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the emission rate without add-on controls option, you would be required to demonstrate that the total mass of organic HAP in all coatings and thinners in each coating type segment divided by the total volume of coating solids in that coating type segment meets the applicable emission limit. For the emission rate without add-on

controls option, you would be required to perform the following.

- Determine the quantity of each coating and thinner used in each coating type segment.
- Determine the mass of organic HAP in each coating and thinner in each coating type segment.
- Determine the volume fraction of coating solids for each coating in each coating type segment.
- Calculate the total mass of organic HAP in all materials in each coating type segment and total volume of coating solids in each coating type segment for each month of the initial compliance period. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the ratio of the total mass of organic HAP for the materials used in each coating type segment to the total volume of coating solids used in the segment.
- Record the calculations and results and include them in your Notification of Compliance Status.

Alternatively, if you apply coatings in more than one coating type segment within a subcategory, you may calculate an overall HAP emission limit for the subcategory and demonstrate compliance by including all coatings and thinners in all coating type segments in the subcategory in calculating the ratio of total mass of organic HAP to total volume of coating solids. If you use that approach, you must use the subcategory limit throughout the 12-month initial compliance period and may not switch between compliance with limits for individual coating type segments and an overall limit. You may not include coatings in different subcategories in determining your overall HAP limit by that approach.

Option 3: Compliance Based on the Emission Rate With Add-On Controls Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements are as follows.

- Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis.
- Determine the mass of organic HAP in each material and the volume fraction of coating solids for each coating used each month of the initial compliance period.
- Calculate the organic HAP emissions from the controlled coating operations using the capture and control efficiencies determined during the performance test and the total mass of organic HAP in materials used in controlled coating operations.
- Calculate the ratio of the total mass of organic HAP emissions to the total volume of coating solids used each month of the initial compliance period.
- Record the calculations and results and include them in the Notification of Compliance Status.

If you use a capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, you would determine both the efficiency of the capture system and the emissions reduction efficiency of the control device. To determine the capture efficiency, you would either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M, or use one of the protocols in 40 CFR 63.3565 to measure capture efficiency. If you have a PTE and all the materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, then you would assume 100 percent capture.

To determine the emissions reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting at least 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites;
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate;
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981;
- Method 4 to determine stack moisture; and
- Method 25 or 25A to determine organic volatile matter concentration.

Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the affected source during each month of the initial compliance period and determine the volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system each month of the initial compliance period. Then you would compare the amount recovered to the amount used to determine the overall control efficiency and apply this efficiency to the ratio of organic HAP to coating solids for the materials used. You would record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you would establish operating limits as part of the initial performance test of an emission capture and control system. The operating limits are the values of certain parameters measured for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits. The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry.

You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in 40 CFR 63.3568 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. The temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or above that limit.

If you use a catalytic oxidizer you may choose from two methods to determine operating limits. In the first method, you would continuously monitor the temperature immediately before and after the catalyst bed and record it at least every 15 minutes. The operating limits would be the average temperature difference across the catalyst bed during the performance test, and for each 3-hour period the

average temperature and the average temperature difference would have to be at or above those limits. In the alternative method, you would continuously monitor the temperature immediately before the catalyst bed and record it at least every 15 minutes. The operating limit would be the average temperature just before the catalyst bed during the performance test, and for each 3-hour period the average temperature would have to be at or above that limit. As part of the alternative method, you must also develop and implement an inspection and maintenance plan for your catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or below this limit.

If you use a concentrator, you would monitor the desorption concentrate stream gas temperature and the pressure drop of the dilute stream across the concentrator. The operating limits would be the desorption concentrate gas stream temperature (to be met as a minimum) and the dilute stream pressure drop (not to be exceeded).

For each capture system that is not a PTE, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test to be met as a minimum. For each capture system that is a PTE, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inch water.

Work Practice Standards. If you use a capture system and control device for compliance, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. That plan would include a description of all steps taken to minimize emissions from those sources (*e.g.*, using closed storage containers, practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, etc.). You would have to make the plan available for inspection if the Administrator requests to see it.

Operations During Startup, Shutdown, or Malfunction. If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

Option 4: Compliance Based on the Control Efficiency/Outlet Concentration Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, you may meet either of the applicable alternative limits summarized in Table 4 of this preamble instead of the organic HAP emission rate limits summarized in Tables 2 and 3 of this preamble. Prior to the initial performance test, you would be required to install control device parameter monitoring equipment to be used to demonstrate compliance with the capture and control efficiencies (or the capture efficiency of the capture system and the oxidizer outlet concentration) and to establish operating limits to be achieved on a continuous basis. During the initial compliance test, you would use the control device parameter monitoring equipment to establish parameter values that represent your operating requirements for the control systems. You would record the initial performance test results and include them in the Notification of Compliance Status.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you would verify the efficiency of the capture system is 100 percent and determine the emissions reduction efficiency of the control device. To verify the capture efficiency, you would either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M, or use one of the protocols in § 63.3565 to measure capture efficiency. If you have a PTE and all the materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, then you would assume 100 percent capture.

To determine the emissions reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting at least 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites;
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate;
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981;
- Method 4 to determine stack moisture; and
- Method 25 or 25A to determine organic volatile matter concentration.

Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the affected source during each month of the initial compliance period and determine the volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system each month of the initial compliance period. Then you would compare the amount recovered to the amount used to determine the overall control efficiency, and apply this efficiency to the ratio of organic HAP to coating solids for the materials used. You would record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you would establish operating limits as part of the initial performance test of an emission capture and control system. The operating limits are the values of certain parameters measured for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits. The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry.

You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the CPMS meet the requirements in 40 CFR 63.3568 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. The temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or above that limit.

If you use a catalytic oxidizer you may choose from two methods to determine operating limits. In the first method, you would continuously monitor the temperature immediately before and after the catalyst bed and record it at least every 15 minutes. The operating limits would be the average temperature difference across the catalyst bed during the performance test, and for each 3-hour period the average temperature and the average temperature difference would have to be at or above these limits. In the alternative method, you would continuously monitor the temperature immediately before the catalyst bed and record it at least every 15 minutes. The operating limit would be the average temperature just before the catalyst bed during the performance test, and for each 3-hour period the average temperature would have to be at or above this limit. As part of the alternative method, you must also develop and implement an inspection and maintenance plan for your catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or below that limit.

If you use a concentrator, you would monitor the desorption concentrate stream gas temperature and the pressure drop of the dilute stream across the concentrator. The operating limits would be the desorption concentrate gas stream temperature (to be met as a minimum) and the dilute stream pressure drop (not to be exceeded).

For each capture system that is not a PTE, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a PTE, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

Work Practice Standards. If you use a capture system and control device for compliance, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. That plan would include a description of all steps taken to minimize emissions from those sources (*e.g.*, using closed storage containers, practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, *etc.*). You would have to make the plan available for inspection if the Administrator requests to see it.

Operations During Startup, Shutdown, or Malfunction. You would be required to develop and operate your capture system and control device according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

H. What Are the Continuous Compliance Requirements?

Option 1: Compliance Based on the Compliant Material Option. If you demonstrate compliance with the proposed emission limits based on the compliant material option, you would demonstrate continuous compliance if, for each 12-month compliance period, the organic HAP content of each coating used does not exceed the applicable emission limit and you use no thinner that contains organic HAP.

Option 2: Compliance Based on the Emission Rate Without Add-On Controls Option. If you demonstrate compliance with the proposed emission limits based on the emission rate without add-on controls option, you would demonstrate continuous compliance if, for each rolling 12-month compliance period, the ratio of organic HAP in all coatings and thinners in each coating type segment to coating solids in that coating type segment is less than or equal to the applicable emission limit. You would follow the same procedures for calculating the organic HAP to coating solids ratio that you used for the initial compliance period. If you use an alternative calculated overall HAP emission limit for all coating type segments within a subcategory, you would use the same procedures that you used for the initial compliance period. Whichever approach you use must be used consistently throughout each 12-month compliance period.

Option 3: Compliance Based on the Emission Rate With Add-On Controls Option. For each coating operation on which you use a capture system and control device, other than a solvent recovery system for which you conduct a liquid-liquid material balance, you would use the continuous parameter monitoring results for the month in determining the mass of organic HAP emissions. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you would assume the capture system and control device are achieving the same percent emissions reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You would then apply that percent reduction to the total mass of organic HAP in materials used in controlled coating operations to determine the monthly emission rate from those operations. If there were any deviations from the operating limits during the month or any bypasses of the control device, you would account for them in the calculation of the monthly emission rate by assuming the capture system and control device were achieving zero emissions reduction during the periods of deviation. Then, you would determine the annual average emission rate by calculating the ratio for the most recent 12-month period.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you would use the liquid-

liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions. Then, you would determine the annual average emission rate by taking the average of the monthly ratios for the most recent 12-month period.

Operating Limits. If you use a capture system and control device, the proposed rule would require you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device is operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device that allow emissions to bypass the control device, you would have to demonstrate that organic HAP emissions from each emission point within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

If the bypass monitoring procedures indicate that emissions are not routed to the control device, you have deviated from the emission limits.

Work Practice Standards. If you use an emission capture system and control device for compliance, you would be required to implement on an ongoing basis the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, that would be a deviation from the work practice standards.

Operations During Startup, Shutdown, or Malfunction. If you use a capture system and control device for compliance, you would be required to develop and operate according to an SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

Option 4: Compliance Based on the Control Efficiency/Outlet Concentration Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and continuous compliance requirements are the same as those in Option 3. For add-on control systems, you would be required to install control device parameter monitoring equipment to be used to demonstrate compliance with the operating requirements for add-on control systems in today's proposed rule. If you operate a CPMS, it would have to collect data at least every 15 minutes and you would need to have at least three data points per hour to have a valid hour of data. You would have to operate the CPMS at all times the surface coating operation and control systems are operating. You would also have to conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you would calculate and record the average values of each operating parameter according to the specified averaging times.

I. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the proposed rule. The General Provisions notification requirements include: Initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notification. If the proposed standards apply to you as a new or reconstructed affected source, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency within 120 days after the date of initial startup or 120 days after publication of the final rule, whichever is later. Existing affected sources must send the initial notification within 1 year after publication of the final rule. The report notifies us and your State agency that you have constructed a new facility, reconstructed an existing facility, or you have an existing facility that is subject to the proposed rule. Thus, it allows you and the permitting authority to plan for compliance activities. You would also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you would conduct a performance test. For a new or reconstructed affected source, the performance test would be required no later than 180 days after initial startup or 180 days after publication of the final rule, whichever is later. For an existing source, the performance test would be required no later than the compliance date. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions for the NESHAP.

Notification of Compliance Status. Your compliance procedures would depend on which compliance option you choose. For each compliance option, you would send us a Notification of Compliance Status within 30 days after the end of the initial compliance period. In the notification, you would certify whether the affected source has complied with the proposed standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and describe how you will determine continuous compliance.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification would also include the measured range of each monitored parameter and the operating limits established during the performance test, and information showing whether the affected source has complied with its operating limits during the initial compliance period.

Recordkeeping Requirements. You would be required to keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3

years' records may be kept off-site. Records pertaining to the design and operation of control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep records of the following:

- Organic HAP content, volatile matter content, coating solids content, and quantity of the coatings and other materials applied; and
- All documentation supporting initial notifications and notifications of compliance status.

If you demonstrate compliance by using a capture system and control device, you would also need to keep records of the following:

- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device;
- All maintenance performed on the capture system and control device;
- Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's SSMP;
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed;
- All information necessary to demonstrate conformance with the affected source's plan for minimizing emissions from mixing, storage, and waste handling operations;
- Each period during which a CPMS is malfunctioning or inoperative (including out of control periods);
- All required measurements needed to demonstrate compliance with the standards; and
- All results of performance tests.

The proposed rule would require you to collect and keep records according to your monitoring plan. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from those records, would need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule including, but not limited to, the emission limits, operating limits, and work practice standards, are not met.

If you use a capture system and control device to reduce organic HAP emissions, you would have to make your SSMP available for inspection if the Administrator requests to see it. The plan would stay in your records for the life of the affected source or until the affected source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superceded versions on record for 5 years following the revision.

Periodic Reports. Each year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would need to include them in the report as follows:

- Report each deviation from the emission limit.
- Report each deviation from the work practice standards if you use an emission capture system and control device.
- If you use an emission capture system and control device, report each deviation from an operating limit and each time a bypass line diverts emissions from the control device to the atmosphere.
- Report other specific information on the periods of time and details of deviations that occurred.

You would also have to include an explanation in each semiannual report if a change occurs that might affect the compliance status of the affected source or you change to another option for meeting the applicable emission limit.

Other Reports. You would be required to submit reports for periods of startup, shutdown, and malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you would report those procedures with your semiannual reports in addition to immediate reports required by the General Provisions in section 63.10(d)(5)(ii).

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Subcategories?

Metal can surface coating operations is on the CAA list of source categories to be regulated because it contains major sources that emit or have the potential to emit at least 9.07 Mg (10 tons) of any one HAP or at least 22.7 Mg (25 tons) of any combination of HAP annually. The proposed rule would control HAP emissions from both new or reconstructed and existing major sources. Area sources are not being regulated under the proposed rule.

We intend the source category to include facilities for which the surface coating of metal cans is either their principal activity or is an integral part of a production process which is the principal activity. While some facilities are entirely dedicated to surface coating, most metal can surface coating operations are located at plant sites for which can manufacturing is the principal activity. Both stand-alone and co-located surface coating operations are included in the source category, and the definition of the source category is intended to reflect that inclusion. The project database was used to identify those ''major source'' or ''synthetic minor source'' facilities that reported using at least 5,700 liter/yr (1,500 gal/yr) of coatings in metal can surface coating operations.

The source category does not include research or laboratory facilities or janitorial, building, and facility maintenance operations.

Subcategory Selection. The statute gives us discretion to determine if and how to subcategorize. A subcategory is a group of similar sources within a given source category. As part of the regulatory development process, we evaluate the similarities and differences among industry segments or groups of facilities comprising a source category. In establishing subcategories, we consider factors such as process operations (type of process, raw materials, chemistry/formulation data, associated equipment, and final products), emission characteristics (amount and type of HAP), control device applicability, and opportunities for pollution prevention. We may also consider existing regulations or guidance from States and other regulatory agencies in determining subcategories.

After reviewing survey responses from the industry, facility site visit reports, and information received from stakeholder meetings we found that the metal can surface coating industry may be grouped into four product groups or subcategories with different coating processes and performance requirements. The four subcategories are (1) One- and two-piece D&I can body coating, (2) sheetcoating, (3) three-piece can body assembly coating, and (4) end lining. We also found significant differences in coating requirements for cans manufactured for different end uses within several of these subcategories that warranted further segmentation into coating types within the subcategories. Descriptions of each subcategory and coating type segment are given in the following paragraphs.

One- and Two-Piece Draw and Iron Can Body Coating. Aluminum or steel D&I cans are made from metal coil by stamping out shallow metal cups which are then placed on a cylinder and forced through a series of rings of decreasing annular space to further draw out the

wall of the can and iron out folds in the metal. Surface coatings, both interior and exterior, are then applied to the formed can.

There are several reasons why D&I can body coating is a separate subcategory. In both annual production and overall HAP emissions, cans made by the D&I process make up the largest component of the metal can manufacturing industry. The processes by which they are produced and surface-coated, and, to some extent, the coatings used, differ significantly from those used for other types of cans, and because of existing VOC rules and the coating processes and configuration of D&I facilities, emission control devices are commonly used.

While the general production and coating application processes are similar for all D&I cans, differences in coating types and relative amount of coating used for cans with different end uses warrant a further subdivision of that subcategory into three coating type segments: (1) Two-piece beverage can coatings, (2) two-piece food can coatings, and (3) one-piece aerosol can coatings. A different MACT standard is proposed for each of those segments.

Sheetcoating. The subcategory includes all of the flat metal sheet coating operations associated with the manufacture of three-piece cans, decorative tins, crowns and closures, and two-piece draw-redraw cans. The methods of coating application and the types of coatings used on flat sheets differ significantly from those used in the other subcategories. The coatings (interior and exterior base coatings, decorative inks, and overvarnishes) are most commonly applied by roller to the flat metal sheets, which then pass through a curing oven. While those emission points are sometimes uncontrolled, the best-performing sources typically control emissions through the use of ultraviolet cured coatings or partial or total enclosures routed to thermal or catalytic oxidizers that achieve destruction efficiencies of 95 percent or higher. Decorative inks, which make up a significant proportion of the coatings used in sheetcoating, have very low concentrations of HAP and are inherently low-emitting.

Three-Piece Can Body Assembly Coatings. Three-piece cans consist of an open-ended can body and two separate ends. Can body assembly is the step in the three-piece can manufacturing process in which flat body blanks are formed into a cylinder and the side seams are joined together. Coating operations associated with can body assembly are interior and exterior side seam stripe and inside spray applications.

Several characteristics of three-piece can body assembly coating place it in a separate subcategory. Can assembly facilities use only a limited number of coatings in relatively small total volumes. Side seam striping is unique in that the application process and coating formulations have higher solvency requirements than other can body and end coatings and end seal compounds. Side seam stripe emissions are typically uncontrolled because emission rates are low and capturing emissions is not economical due to high air flow rates and low solvent loading.

Three-piece cans made for different end uses and contents require coatings, particularly side seam stripes, with widely differing chemical characteristics and shelf life requirements. Some food cans must be sterilized before filling by subjecting them to high temperature steam, chemicals, or a combination of both, while other food cans do not require this kind of aseptic processing. Different kinds of foods vary in their acid contents. Coatings required on cans for these different end uses often have significantly different HAP contents. Inside spray coatings also differ from side seam stripes in quantity used and chemical composition. For those reasons, the three-piece can body assembly coating subcategory is divided into five distinct coating type segments with different emission limits for each. Those segments include: (1) Inside spray coatings, (2) aseptic side seam stripe coatings for food cans, (3) non-aseptic side seam stripe coatings for food cans, (4) side seam stripe coatings for non-food general line cans, and (5) side seam stripe coatings for non-food aerosol cans.

End Lining Coatings. End lining coating operations consisting of the application of end seal compounds to can ends are in a separate subcategory for several reasons. Unlike other coatings, end seal compounds are applied in a bead around the edges of can ends. Curing takes place under ambient conditions (not in a curing oven) over a longer period of time than other coatings. And the coating formulation (solids content, types of solvents used) of end seal compounds differs significantly from other coatings. Emissions from end lining operations are not controlled because the curing rate of end seal compounds is slow. Controlling such volatile HAP emissions is not cost effective, since it would result in a high volume, low concentration emission stream requiring significant auxiliary fuel usage to achieve a high destruction efficiency.

As with side seam stripes, some end seal compounds must withstand aseptic processing while others do not have to meet that requirement. There are significant differences in formulation and HAP content (and emissions) for end seal compounds for aseptic and non-aseptic applications. For that reason the end lining subcategory is divided into two coating type segments: aseptic and non-aseptic.

B. How Did We Select the Regulated Pollutants?

Organic HAP. Available emission data collected during the development of the proposed rule show that the primary organic HAP emitted from metal can surface coating operations include EGBE and other glycol ethers, xylenes, hexane, MEK, and MIBK. Those compounds account for 95 percent of that source category's nationwide organic HAP emissions. Other significant organic HAP emissions include isophorone, ethyl benzene, toluene, trichloroethylene, formaldehyde, and naphthalene. Because coatings used by metal can surface coating operations contain many combinations of those and other organic HAP, it is not practical to regulate them individually. Therefore, the proposed rule would regulate emissions of all organic HAP.

Inorganic HAP. Based on information reported during the development of the proposed rule, inorganic HAP contained in the coatings used by that source category include chromium, manganese, and antimony compounds. Because these inorganic compounds are in the coating solids, they are retained in the dry (film) coating on the substrate to which the coating is applied. The only opportunity for any quantifiable solids material to enter the ambient air is if they are spray-applied and emitted as overspray. Because of the atomization of the coating during spray application, inorganic compounds become airborne and are either deposited on the substrate, fall to the floor in the spray application area, or enter the air and become susceptible to transport to other areas in the building or outside into the ambient air. The data available to EPA indicate that the facilities in that source category that use spray application techniques in rare instances apply coatings that contain inorganic HAP compounds. However, because they do not have emission control systems for inorganic compounds, there is no demonstrated control technology on which to base a standard. Therefore, the proposed rule would not regulate emissions of inorganic HAP.

C. How Did We Select the Affected Source?

In selecting the affected source(s) for emission standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category or subcategory being regulated. The affected source also serves to determine where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms ''construction'' and ''reconstruction'' with reference to the term ''affected source'' and provide that new source MACT applies when construction or reconstruction of an affected source occurs. The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source.

When an emission standard is based on a collection of emission sources or total facility emissions, we select an affected source based on that same collection of emission sources, or the total facility, as well. That approach for defining the affected source broadly is particularly appropriate for industries where a plantwide emission standard provides the opportunity and incentive for owners and operators to utilize control strategies that are more cost-effective than if separate standards were established for each emission point within an affected source.

Selection of Affected Source. The affected source for the proposed standards is broadly defined for each subcategory. It includes all metal can surface coating operations and associated ancillary equipment within each of the four subcategories. Those operations include all coating application equipment, all coating and thinner storage containers and mixing vessels, all equipment and containers used for conveying coatings and thinners, and all storage containers and conveyance equipment for waste materials generated by a metal can surface coating operation.

Since a facility may have coating operations in more than one subcategory and, thus, be subject to separate emission limits for each subcategory, we have defined all the coating-related equipment in each subcategory as the affected source. In selecting the affected source, we considered, for each operation, the extent to which HAP-containing materials are used and the amount of HAP that are emitted. Coating application, flash-off, and curing/drying operations account for the majority of HAP emission and are included in the affected source.

We were not able to obtain data to adequately quantify HAP emissions from storage, mixing, cleaning, waste handling and wastewater treatment. However, solvents that are added to coatings as thinners, for example, may be emitted during mixing and storage. The level of emissions depends on the type of mixing and the type of storage container and the work practices used at the affected source. The magnitude of emissions from cleaning depends primarily on the type, amount, and HAP content of cleaning materials used. Emissions from waste handling operations depend on the type of system used to collect and transport organic-HAP-containing waste materials in the affected source. The HAP emissions from wastewater treatment depend on the quantity and types of HAP discharged to the wastewater treatment operation and the subsequent wastewater treatment processes, *e.g.*, treatment by aeration or by biodegradation. Mixing, storage, cleaning, waste handling, and wastewater treatment operations are included in the affected source.

A broad definition of the affected source was selected to provide maximum flexibility in complying with the proposed emission limits for organic HAP. In planning its total usage of HAP-containing materials, each affected source can select among available coating, printing, thinning, and cleaning materials, as well as use of emission capture systems and add-on controls for coating operations, to maximize emissions reductions in the most cost-effective manner.

Additional information on the metal can surface coating operations selected for regulation and other operations are included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for New or Reconstructed Affected Sources and Existing Affected Sources?

The sections below present the rationale for determining the MACT floor, regulatory alternatives beyond the floor, and selection of the proposed standards for new or reconstructed and existing affected sources.

How did we determine the MACT floor? After we identify the specific source categories or subcategories of sources to regulate under section 112 of the CAA, we must develop emission standards for each category and subcategory. Section 112(d)(3) establishes a minimum baseline or floor for standards. For new or reconstructed affected sources in a category or subcategory, the standards cannot be less stringent than the emission control achieved in practice by the best-controlled similar source for which we have emission information. The standards for existing affected sources can be less stringent than standards for new or reconstructed sources, but they cannot be less stringent than the average emission control achieved by the best-performing 12 percent of existing sources (or the best-performing five existing sources for categories or subcategories with fewer than 30 sources) for which we have emission information.

In the metal can surface coating industry, organic HAP emission control for surface coating operations is accomplished through the use of low- or no-HAP coatings and thinners and add-on capture and control systems. While various emission control techniques have achieved broad use in the industry, different facilities use various combinations of low- or no-HAP materials and add-on control equipment for different types of surface coating operations. For example, the continuous linear configuration of sheetcoating operations make them more amenable to emissions reduction with add-on control equipment, while the nature of side seam stripe coating applications make add-on emission control impractical.

Thus, the most reasonable approach to establishing a MACT floor is the evaluation of a source's organic HAP emissions for each type of coating operation and each coating type segment it includes. To account for differences in coating volumes used in different types of operations and differences in production levels from one source to another, we normalized the organic HAP emission rate by the volume of coating solids used.

We used information obtained from industry survey responses to estimate the organic HAP emission rate for each subcategory and coating type segment included in each facility. We calculated total organic HAP emissions by assuming that 100 percent of the volatile components in all coatings and thinners are emitted. Sources used for determining the MACT floor emission limits included those facilities that listed major source or synthetic minor source as their title V status on their responses to questionnaires we sent to them and that used at least 5,700 liters/yr (1,500 gal/yr) of coatings in metal can surface coating operations. Other sources were included if their data indicated that they have the capacity to increase their organic HAP emissions to at least 9.1 Mg/yr (10 tpy), even though

they did not identify themselves as major or synthetic minor sources.

Using the organic HAP emissions and the total volume of coating solids used in each subcategory and coating type segment for each survey respondent, we calculated the normalized organic HAP emissions (emission rate) in units of kilograms (kg) organic HAP per liter of coating solids (pounds (lb) organic HAP per gal of coating solids) used. The sources were then ranked from the lowest to the highest emission rate in each of the four subcategories and coating type segments.

For subcategories and coating segments in which there were more than 30 sources, the existing source MACT floor was based on the top 12 percent of the sources. For subcategories and coating segments with fewer than 30 sources, the existing source MACT floor was based on the top five sources. The average emission rate for each subcategory was interpreted as the median value of the included sources. The median emission rate was selected rather than the mean or mode because it is associated with an actual emission rate being achieved by a real facility. The best performing source in each subcategory or coating segment in the database determined the MACT floor for new or reconstructed affected sources.

The MACT floor analysis for new affected sources resulted in the emission limits for each subcategory and coating segment given in Table 2 of this preamble. The analysis for existing affected sources resulted in emission limits given in Table 3 of this preamble. The alternative control efficiency and outlet concentration limits for those new and existing sources using capture and control systems are given in Table 4 of this preamble. The survey data showed no appreciable differences in substrates coated, coating technologies used, or the applicability of control measures between the floor sources and the remaining sources in each subcategory and coating segment.

After the floors have been determined for new or reconstructed and existing sources in a source category or subcategory, we must set emission standards that are technically achievable and no less stringent than the floors. Such standards must then be met by all affected sources within the source category or subcategory. We identify and consider any reasonable regulatory alternatives that are beyond-the-floor, taking into account emissions reductions, cost, non-air quality health and environmental impacts, and energy requirements. Different beyond-the-floor alternatives may be considered for new or reconstructed affected sources and existing affected sources.

The beyond-the-floor option considered for all the subcategories and for both new and existing sources was requiring the use of capture systems and add-on control devices for all metal can surface coating operations. The add-on control device chosen for the beyond-the-floor analysis was a regenerative thermal oxidizer (RTO). An RTO was chosen to reflect the highest emission reduction level possible.

In evaluating the beyond-the-floor option, we calculated the additional costs and emission reductions associated with the use of a capture system and RTO. We calculated the cost to reduce each ton of organic HAP emissions using the more stringent level of control. Requiring sources to meet the beyond-the-floor level would result in an estimated additional emissions reduction of 283 Mg/yr (312 tpy) at an estimated cost of $14.6 million per year or $51,600 per Mg HAP ($46,800 per ton HAP) reduced.

Without having information on the benefits that would be achieved by reducing emissions beyond-the-floor, we determined that the additional emission reductions that could be achieved do not warrant the costs that each affected source would incur by using add-on controls. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. After implementation of those standards, we will evaluate the health and environmental risks that may be posed as a result of exposure to emissions from the metal can surface coating source category. At that time, we will determine whether additional control is warranted in light of the available risk information.

We note here that our assumption, used in the development of the MACT floors, that 100 percent of the organic HAP in the materials used are emitted by the affected source would not apply when the source sends organic HAP waste materials to a facility for treatment or disposal. We made that assumption because the industry survey responses provided little information as to the amount of organic HAP recovered and recycled or treated and disposed of as a hazardous waste. We, therefore, concluded that the practice may not be common within the metal can surface coating industry. We recognize, however, that some metal can surface coating facilities may conduct such activities and should be allowed to account for such activities in determining their emissions. Thus, the proposed rule allows you to reduce the organic HAP emissions by the amount of any organic HAP contained in waste treated or disposed of at a hazardous waste treatment, storage, and disposal facility that is regulated under 40 CFR part 262, 264, 265, or 266.

The alternative capture/control efficiency limit of 95 percent for existing sources and 97 percent for new or reconstructed sources, and the 20 parts per million by volume HAP outlet concentration limit are based on the documented emission reductions in test reports provided by metal can facilities and the EPA's study of available incinerator technology, cost, and energy use. We are requesting specific comment on the usefulness and likelihood of the proposed alternative limits and the level of control required by the alternative limits.

E. How Did We Select the Format of the Standards?

We selected the primary format of the standards to be mass of HAP per volume of coating solids. We selected volume of coating solids to normalize the rate of organic HAP emissions across all sizes and types of coating operations and facilities. Volume of coating solids used is directly related to the surface area coated and, therefore, provides an equitable basis of comparison for all coatings, regardless of differences in coating densities. A format based on the mass or weight of coating solids instead of volume could result in inequitable standards for higher-density coatings compared to coatings with lower densities per unit volume.

To provide compliance flexibility, we also provided an alternative compliance option based on percent reduction achieved by a capture system and control device or the HAP concentration exiting a control device. We selected those alternative formats because they would achieve equivalent or greater HAP emissions reduction at those facilities using capture/control systems while reducing the recordkeeping and reporting burden for those facilities. Those alternative limits are based on test report data provided by industry and reflect what we believe to be the achievable level of control available with control devices commonly used by the metal can surface coating industry.

Another choice for the format of the standards that we considered but rejected was a usage limit (mass of HAP per unit of production). As it is not our intent to limit a facility's production under those proposed standards, we rejected a usage limit.

F. How Did We Select the Testing and Initial Compliance Requirements?

The MACT levels of control can be achieved in several different ways. Many affected sources would be able to use low- or no-HAP coatings, although they may not be available to meet all needs. If an affected source also uses thinners containing organic HAP, it may be able to switch to widely available low- or no-HAP thinners to reduce organic HAP emissions to the MACT level of control. Other affected sources may use capture systems and add-on control devices, either alone or in combination with low- HAP coatings, to reduce emissions.

Reflecting those alternative approaches, the proposed standards would allow you to choose among several options to demonstrate compliance with the proposed standards for organic HAP, using coatings and thinners with low- or no-organic HAP, using a combination of low- or no-HAP coatings and emission capture and control devices, or using emission capture and control devices for all surface coating operations.

For the Compliant Material Option. You would be required to document the organic HAP content of all coatings and show that each is less than the applicable emission limit. You would also have to show that each thinner used contains no organic HAP. Method 311 is the method developed by EPA for determining the mass fraction of organic HAP in coatings and has been used in previous surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed standards.

Method 24 is the method developed by EPA for determining the mass fraction of volatile matter for coatings and can optionally be used to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In past standards, volatile organic compound (VOC) emission control measures have been implemented in coating industries with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

The proposed methods for determining volume fraction of coating solids are either ASTM Method D2697–86(1998) or ASTM Method D6093–97. Those are voluntary consensus standards (VCS) determined to be appropriate for the proposed rule; they represent the consensus of coating industry and other experts involved in their development.

For the Emission Rate Without Add-On Controls Option. To demonstrate initial compliance using that option, you would calculate the total organic HAP emission rate for all of your coating operation(s) in each subcategory and coating type segment. Total organic HAP emission rate is based on the total mass of organic HAP in all coatings and thinners and the total volume of coating solids used during the initial compliance period. You would be required to demonstrate that the organic HAP emission rate does not exceed the applicable emission limit using the methods discussed previously.

For the Emission Rate With Add-On Controls Option. If you use a capture system and control device, other than a solvent recovery device for which you conduct a monthly liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency. For a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the quantity of volatile matter applied and the quantity recovered during the initial compliance period to determine its overall control efficiency. The total monthly mass of organic HAP in all coatings and thinners used in each subcategory or coating segment with controls would be reduced by the overall control efficiency. That reduced value for total mass of organic HAP would then be used with the values from the preceding 11 months to calculate the 12-month rolling average organic HAP emission rate in kg HAP/liter of coating solids (lb HAP/gal of coating solids).

If you conduct a performance test, you would also determine parameter operating limits during the test. The test methods that the proposed standards would require for the performance test have been required under many standards of performance for industrial surface coating sources under 40 CFR part 60 and NESHAP under 40 CFR part 63. We have not identified any other methods that provide advantages over those methods.

For the Capture Efficiency/Outlet Concentration Option. If you use a capture system and control device other than a solvent recovery device for which you conduct a monthly liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency or the control device outlet concentration and meet the same initial compliance requirements described in Option 3.

G. How Did We Select the Continuous Compliance Requirements?

To demonstrate continuous compliance with the emission limits, you would need records of the quantity of coatings and thinners used and the data and calculations supporting your determination of their organic HAP content. If you conduct liquid-liquid material balances, you would need records of the quantity of volatile matter used and the quantity recovered by the solvent recovery systems each month.

To ensure continuous compliance with the proposed organic HAP emission limits and operating limits, the proposed standards would require continuous parameter monitoring of capture systems and control devices and recordkeeping. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and operating limits.

We are proposing that certain parameters be continuously monitored for the types of capture systems and control devices commonly used in the industry. Those monitoring parameters have been used in other standards for similar industries. The values of those parameters that correspond to compliance with the proposed emission limits are established during the initial or most recent performance test that demonstrates compliance. Those values are your operating limits for the capture system and control device.

You would be required to determine 3-hour average values for most monitored parameters for the affected source. We selected that averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

H. How Did We Select the Test Methods for Determining Compliance With the Emission Limits Using Add-On Control Devices?

Today's proposed rule would require you to conduct performance tests to demonstrate compliance with the compliance options using add-on control devices. When determining compliance with options using add-on control devices, you also would be required to determine the capture efficiency of the associated enclosures if the enclosure does not qualify as a PTE. The test methods you would have to use to measure those pollutants and capture

efficiency for enclosures are discussed below.

We are proposing the use of EPA Method 25A, ''Determination of Total Gaseous Organic Matter Concentration Using a Flame Ionization Analyzer,'' for measuring THC emissions because most of the metal can facilities that are already required to measure THC emissions use that method. Also, most of the available emissions data that we used to evaluate THC control efficiencies were measured using Method 25A and reported on an as carbon basis. Method 25A is better suited than EPA Method 25, ''Measurement of Total Gaseous Nonmethane Organic Emissions as Carbon (TGNMO),'' for measuring emission streams from metal can coating lines which typically have lower THC concentrations (less than 50 parts per million) and relatively high moisture contents. However, unlike Method 25, Method 25A does measure methane as a THC. Because many of the well-controlled metal can facilities are required by permit to reduce VOC emissions, those facilities generally are allowed to subtract methane emissions from the THC measurement when reporting VOC emissions because methane is not a VOC, according to EPA's definition of VOC. Therefore, we also would allow you to subtract methane emissions from measured THC values using EPA Method 18, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromotography.'' Method 18 is a self-validating method.

We are proposing the use of EPA Method 204, ''Criteria for and Verification of Permanent or Temporary Total Enclosure,'' and Methods 204A through 204F for determining the capture efficiency of enclosures. Methods 204A through 204F include the following: Method 204A, ''Volatile Organic Compounds Content In Liquids Input Stream,'' Method 204B, ''Volatile Organic Compounds Emissions In Captured Stream,'' Method 204C, ''Volatile Organic Compounds Emissions In Captured Stream (Dilution Technique),'' Method 204D, ''Volatile Organic Compounds Emissions In Uncaptured Stream From Temporary Total Enclosure,'' Method 204E, ''Volatile Organic Compounds Emissions In Uncaptured Stream From Building Enclosure,'' and Method 204F, ''Volatile Organic Compounds Content In Liquid Input Stream (Distillation Approach).'' If the enclosure meets the criteria in EPA Method 204 for a PTE, then you may assume that its capture efficiency is 100 percent. If the enclosure is not a PTE, then you would have to build a temporary total enclosure (TTE) around it that meets the definition of a TTE in EPA Method 204, and you would be required to determine the capture efficiency of the TTE using Methods 204A through 204F (as appropriate). You would then have to measure emissions from both the control device and the TTE and use the combined emissions to determine compliance.

Industry representatives have expressed concern with using EPA Methods 204 and 204A through F for determining capture efficiency of coating line enclosures. The industry representatives have indicated that some facilities may have difficulty retrofitting a PTE or TTE that meets the EPA Method 204 criteria. Partial enclosures may be able to achieve high capture, but Methods 204 and 204A through F are the only available methods for testing the efficiency of partial enclosures. We recognize the need for flexibility in determination of capture efficiency for metal can coating line enclosures and welcome your comments on alternative approaches for determining capture efficiency. Today's proposed rule would allow facilities to petition the Administrator for use of alternative test methods.

I. How Did We Select Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 5 of the proposed subpart KKKK. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with and effective enforcement of the proposed standards, modifying them as appropriate for the metal can surface coating category.

IV. Summary of Environmental, Energy, and Economic Impacts

The proposed standards would affect 142 major source metal can surface coating facilities. The impacts are presented relative to a baseline reflecting the level of control prior to the standards. Due to consolidation throughout the industry, there is not expected to be any net growth within the metal can surface coating industry within the next 5 years. Therefore, the estimate of the impacts is presented for existing facilities only. For a facility that is already in compliance with the standards, only monitoring, recordkeeping, and reporting cost impacts were estimated. For more information on how impacts were estimated, see the BID (EPA–453/R–02–008).

The outcome of two delisting petitions that have been submitted to EPA could significantly affect the estimated impacts of this rulemaking. These petitions are the petition to delist EGBE from the HAP list and the petition to delist the two-piece beverage can subcategory from the source category list. Both petitions are being reviewed by the EPA. If granted, the delisting of either EGBE or the two-piece beverage can subcategory could affect the proposed emission limits and the number of affected sources. Thus, the estimated impacts of this proposed rule could change. Once decisions on the petitions are finalized, we will evaluate whether any changes to the proposed rule are appropriate.

A. What Are the Air Impacts?

The proposed emission limits are expected to reduce nationwide organic HAP emissions from existing major affected sources by approximately 6,160 Mg/yr (6,800 tpy). That represents a reduction of 71 percent from the baseline organic HAP emissions of 8,700 Mg/yr (9,600 tpy). Table 5 of this preamble gives a summary of the primary air impacts for major coating segment groupings associated with implementation of the proposed rule.

TABLE 5.—SUMMARY OF PRIMARY AIR IMPACTS BY SUBCATEGORY OR COATING SEGMENT FOR EXISTING SOURCES

Subcategory or or coating segment	Emissions before NESHAP, Mg/yr (tpy)	Emissions after NESHAP, Mg/yr (tpy)	Emissions reduction, Mg/yr (tpy)	Percent reduction
Two-piece D&I beverage can body coatings	4,468 (4,922)	1,644 (1,811)	2,824 (3,111)	63

TABLE 5.—SUMMARY OF PRIMARY AIR IMPACTS BY SUBCATEGORY OR COATING SEGMENT FOR EXISTING SOURCES—Continued

Subcategory or or coating segment	Emissions before NESHAP, Mg/yr (tpy)	Emissions after NESHAP, Mg/yr (tpy)	Emissions reduction, Mg/yr (tpy)	Percent reduction
Two-piece D&I food can body coatings	765 (843)	139 (153)	626 (690)	82
One-piece D&I aerosol can body coatings	16 (18)	16 (18)	0 (0)	0
Sheetcoatings	2,289 (2,522)	404 (445)	1,885 (2,077)	82
Three-piece food can assembly coatings	370 (408)	285 (314)	85 (94)	23
Three-piece non-food can assembly coatings	45 (50)	38 (42)	6 (7)	14
End lining coatings	763 (841)	34 (38)	729 (803)	95
Total	8,718 (9,603)	2,560 (2,820)	6,158 (6,783)	71

B. What Are the Cost Impacts?

Cost impacts include the costs of recordkeeping and reporting, capital equipment costs, performance testing costs, and material costs as facilities comply with the proposed rule. Recordkeeping and reporting includes all labor hours related to the tracking of coating usage, the cost of purchasing computer equipment, the labor hours required to write and submit reports, and the labor hours required to train coating personnel. Capital equipment costs for the facilities that choose to use capture equipment and add-on control devices to comply with the proposed rule include the purchase, installation, and operation of the equipment. Performance testing costs for the facilities that choose to use add-on control devices to comply with the standards include the labor hours required for a contractor to conduct performance testing on each control device used and to develop the associated reports for recordkeeping and reporting purposes.

Material costs include the cost of switching to low- or no-HAP coatings. For facilities that choose to use low- or no-HAP coatings to comply with the standards, coatings with lower HAP content are considered more expensive than higher HAP content coatings.

The total annualized costs for the 142 existing major sources are estimated at $56.2 million. Those estimates are broken down as follows; monitoring, recordkeeping, and reporting costs would contribute $7.3 million to the overall cost of the NESHAP, material costs would contribute $4.1 million, and capital equipment costs would contribute $44.8 million annually.

C. What Are the Economic Impacts?

We performed an EIA to provide an estimate of the facility and market impacts of the proposed standards as well as the social costs. The goal of the EIA is to estimate the market response of the metal can coating and production facilities to the proposed regulation and to determine the economic effects that may result due to this NESHAP. The metal can source category contains 189 potentially affected facilities that may be affected by the proposed rule. The potentially affected companies are owned by 30 companies. The NAICS code that describes the metal can manufacturing industry is 332431, Metal Can Manufacturing.

Metal can production leads to potential HAP emissions during the can coating process when high concentrations of organic HAP solvents are used and dispersed. Emissions are generated during coating application, during transportation to the oven (evaporation), and during curing. The compliance costs are associated with chemical substitution during the coating process, the installation of pollution control equipment, and recordkeeping and reporting activities. The estimated total annualized costs for the NESHAP are $56.2 million per year divided across 142 major source facilities.

In terms of industry impacts, metal can producers experience a total projected decrease of $16 million in pre-tax earnings which reflects the compliance costs associated with the production of metal cans and the resulting reductions in revenues due to the increase in the prices of the directly affected product markets and reduced quantities purchased. Through the market impacts described above, the proposed rule will create both gainers and losers within the metal can industry. Approximately one-third of the modeled facilities experience an increase in pre-tax earnings as a result of increases in price that exceed their compliance costs per unit. In contrast, the remaining two-thirds of metal can facilities experience losses in pre-tax earnings. In addition, the EIA indicates that none of the facilities within the metal can market (not including small businesses) are at risk of closure because of the proposed standards. Overall employment is projected to decrease by 176 employees, which represents a decrease of $^{8}/_{10}$th of one percent as a result of the proposed rule.

Based on the market analysis, the total social cost of the proposed rule is projected to be $53.5 million. The estimated social costs differ slightly from the projected engineering costs because social costs account for producer and consumer behavior. Consumers are projected to lose $33.3 million or 60 percent of the total social costs of the proposed rule. Producers will lose $20.2 million, or 40 percent of the total social costs. For more information, consult the EIA report supporting the proposed rule, ''Economic Impact Analysis of Metal Can MACT Standards'' (EPA–452/R–02–005).

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low or no-organic HAP content coatings and thinners at existing sources would result in any increase or decrease in non-air health, environmental, and energy

impacts. There would be no change in utility requirements associated with the use of these materials so there would be no change in the amount of energy consumed as a result of the material conversion. Also, there would be no significant change in the amount of materials used or the amount of waste produced.

Since many facilities in the D&I can body coating and sheetcoating subcategories currently use add-on emission control devices to meet existing requirements, we anticipate that facilities in those subcategories would use add-on controls to comply with the proposed standards. Secondary air and energy impacts would result from fuel combustion needed to operate these control devices which are expected to be RTO.

The RTO require electricity and the combustion of natural gas to operate and maintain operating temperatures. By-products of fuel combustion required to generate electricity and maintain RTO operating temperature include emission of carbon monoxide, nitrogen oxides, sulfur dioxide, and particulate matter less than 10 microns in diameter (PM_{10}). Assuming the electricity required for RTO operation is generated at coal-fired plants built since 1978 and using air pollution-42 emissions factors, generation of electricity required to operate RTO at all affected D&I can body coating and sheetcoating facilities would result in the following increases in the following air pollutants: carbon monoxide, 81 tpy; nitrogen oxides, 182 tpy; sulfur dioxide, 438 tpy; and PM_{10}, 86 tpy.

Energy impacts include the consumption of electricity and natural gas needed to operate RTO. The estimated increase in electricity consumption from the operation of RTO at all D&I can body coating and sheetcoating facilities is 36,730,000 kilowatt hours per year. Increased fuel energy consumption resulting from burning natural gas would be 1,197,000 megamillion British thermal units per year. No significant secondary water or solid waste impacts would result from the operation of emission control devices.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include rules that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the proposed rule. Although section 6 of Executive Order 13132 does not apply to the proposed rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate metal can surface coating operations. Thus, Executive Order 13175 does not apply to the proposed rule.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annualized cost of the proposed rule for any year has been estimated to be less than $56.2 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with the RFA, EPA conducted an assessment of the proposed standards on small businesses within the metal can industry. Based on SBA NAICS-based size definitions and reported sales and employment data, EPA identified 13 small business, or 43.3 percent of the metal can companies. Small businesses are expected to incur only 2 percent of the total industry annualized compliance costs of $56.2 million. The EPA estimates that 10 of the 13 small businesses will experience an impact less than 1 percent of total company sales, two small firms will experience impacts between 1 and 3 percent, and one firm will experience an impact of more than 3 percent of sales. Consequently, one of the 15 facilities owned by small businesses is likely to prematurely close as a result of the proposed rule. For more information, consult the EIA report entitled ''Economic Impact Analysis for the Proposed Metal Can NESHAP'' in Docket A–98–41.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2079–01) and a copy may be obtained from Susan Auby by mail at the U.S. EPA, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) which are mandatory for all operators subject to national emission standards. Those recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require maintaining records of all coating and thinning materials data and calculations used to determine compliance. That information includes the amount (kg) used during each 12-month compliance period, mass fraction organic HAP, and, for coating materials only, mass fraction of solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each monthly and rolling 12-month compliance period and all data, calculations, test results, and other supporting information used to determine this value. The recordkeeping requirements are only for the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be approximately 1,815 labor hours per year at a total annual cost of $545,000. That estimate includes a one-time performance test and report (with repeat tests where needed); one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed; semiannual compliance status reports; and recordkeeping. There are no

capital/startup costs associated with the monitoring requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for the information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington, DC 20460 ((202) 566–1700)), marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 15, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 14, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use VCS in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA cites the following standards in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A through F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods/performance specifications. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through 204F, and 311. The search and review results have been documented and are placed in the docket (A–98–41) for the proposed rule.

Three VCS described below were identified as acceptable alternatives to EPA test methods for the purposes of the proposed rule.

The VCS ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in the proposed rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. That part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

The two VCS, ASTM D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' and ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' are cited in the proposed rule as acceptable alternatives to EPA Method 24 to determine the volume fraction of coating solids. Currently, EPA Method 24 does not have a procedure for determining the volume of solids in coatings. Those standards augment the procedures in Method 24, which currently states that volume solids content be calculated from the coating manufacturer's formulation.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference (IBR) in EPA Method 24. *Five VCS:* ASTM D1979–91, ASTM D3432-89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are IBR in EPA Method 311.

In addition to the VCS EPA uses in the proposed rule, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 11 of those 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, EPA does not intend to adopt those standards for that purpose. The reasons for the determination for the 11 methods are discussed below.

The VCS ASTM D3154–00, ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' is impractical as an alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of the proposed rulemaking since the standard appears to lack in quality control and quality assurance requirements. Specifically, ASTM D3154–00 does not include the following: (1) Proof that openings of standard pitot tube have not plugged during the test, (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, their calibration must be checked after each test series, and (3) the frequency and validity range for calibration of the temperature sensors.

The VCS ASTM D3464–96 (2001), ''Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer,'' is impractical as an alternative to EPA Method 2 for the purposes of the proposed rulemaking primarily because applicability specifications are not clearly defined, *e.g.*, range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in those areas.

*The VCS ISO 10780:*1994, ''Stationary Source Emissions-Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts,'' is impractical as an alternative to EPA Method 2 in the proposed rulemaking. The standard recommends the use of an L-shaped pitot which historically has not been recommended by EPA. The EPA specifies the S-type design which has large openings that are less likely to plug up with dust.

The VCS, CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' is unacceptable as a substitute for EPA Method 3A since it does not include quantitative specifications for measurement system performance, most notably the calibration procedures and instrument performance characteristics.

The instrument performance characteristics that are provided are nonmandatory and also do not provide the same level of quality assurance as the EPA methods. For example, the zero and span/calibration drift is only checked weekly, whereas the EPA methods require drift checks after each run.

Two very similar standards, ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration,'' and ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' are impractical alternatives to EPA Method 3A for the purposes of the proposed rulemaking because they lack in detail and quality assurance/quality control requirements. Specifically, those two standards do not include the following: (1) Sensitivity of the method, (2) acceptable levels of analyzer calibration error, (3) acceptable levels of sampling system bias, (4) zero drift and calibration drift limits, time span, and required testing frequency, (5) a method to test the interference response of the analyzer, (6) procedures to determine the minimum sampling time per run and minimum measurement time, and (7) specifications for data recorders in terms of resolution (all types) and recording intervals (digital and analog recorders only).

*The VCS ISO 12039:*2001, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' is not acceptable as an alternative to EPA Method 3A. The ISO standard is similar to EPA Method 3A, but is missing some key features. In terms of sampling, the hardware required by ISO 12039:2001 does not include a three-way calibration valve assembly or equivalent to block the sample gas flow while calibration gases are introduced. In its calibration procedures, ISO 12039:2001 only specifies a two-point calibration while EPA Method 3A specifies a three-point calibration. Also, ISO 12039:2001 does not specify performance criteria for calibration error, calibration drift, or sampling system bias tests, as in the EPA method, although checks of those quality control features are required by the ISO standard.

The VCS ISO 11890–1 (2000) Part 1, ''Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content—Difference Method,'' is impractical as an alternative to EPA Method 24 because measured nonvolatile matter content can vary with experimental factors such as temperature, length of heating period, size of weighing dish, and size of sample. The standard ISO 11890–1 allows for different dish weights and sample sizes than the one size (58 millimeters in diameter and sample size of 0.5 gram) of EPA Method 24. The standard ISO 11890–1 also allows for different oven temperatures and heating times depending on the type of coating, whereas EPA Method 24 requires 60 minutes heating at 110 degrees Celsius at all times. Because the EPA Method 24 test conditions and procedures define volatile matter, ISO 11890–1 is unacceptable as an alternative because of its different test conditions.

The VCS ISO 11890–2 (2000) Part 2, ''Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content—Gas Chromatographic Method,'' is impractical as an alternative to EPA Method 24 because ISO 11890–2 only measures the VOC added to the coating and would not measure any VOC generated from the curing of the coating. The EPA Method 24 does measure cure VOC, which can be significant in some cases, and, therefore, ISO 11890–2 is not an acceptable alternative to this EPA method.

Two VCS, EN 12619:1999 ''Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method'' and ISO 14965:2000(E) ''Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method,'' are impractical alternatives to EPA Method 25 and 25A for the purposes of the proposed rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are that low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Three of the 14 VCS identified in the search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a VCS body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/CD 17895, ''Paints and Varnishes—Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints,'' for EPA Method 24.

Listed in 40 CFR 63.3541, 63.3551, 63.3561, 63.3564, 63.3565, 63.3566, 63.3571, 63.3574, 63.3575, and 63.3576 to subpart KKKK of the proposed standards are the EPA testing methods included in the regulation. Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart KKKK to read as follows:

Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

Sec.

What this Subpart Covers

Emission Limitations

General Compliance Requirements

Notifications, Reports, and Records

What This Subpart Covers

§ 63.3480 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for metal can surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.3481 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is surface coating of metal cans and ends (including decorative tins) and metal crowns and closures. It includes the subcategories listed in paragraphs (a)(1) through (4) of this section. Surface coating is the application of coatings to a substrate using, for example, spray guns or dip tanks.

(1) *One and two-piece draw and iron can body coating.* The one and two-piece draw and iron can body coating subcategory includes all coating processes involved in the manufacture of can bodies by the draw and iron process. This subcategory includes three distinct coating type segments reflecting the coatings appropriate for cans with different end uses. Those are two-piece beverage can body coatings, two-piece food can body coatings, and one-piece aerosol can body coatings.

(2) *Sheetcoating.* The sheetcoating subcategory includes all of the flat metal sheet coating operations associated with the manufacture of three-piece cans, decorative tins, crowns, and closures.

(3) *Three-piece can body assembly coating.* The three-piece can body assembly coating subcategory includes all of the coating processes involved in the assembly of three-piece metal can bodies. The subcategory includes five distinct coating type segments reflecting the coatings appropriate for cans with different end uses. Those are inside spray on food cans, aseptic side seam stripes on food cans, non-aseptic side seam stripes on food cans, side seam stripes on general line non-food cans, and side seam stripes on aerosol non-food cans.

(4) *End lining.* The end lining subcategory includes the application of end seal compounds to metal can ends. That subcategory includes two distinct coating type segments reflecting the end seal compounds appropriate for can ends with different end uses. Those are aseptic end seal compounds and non-aseptic end seal compounds.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3482, that uses 5,700 liters (1,500 gallons (gal)) per year or more of coatings in the surface coating of metal cans or ends (including decorative tins) or metal crowns or closures and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating that meets the criteria of paragraphs (c)(1) through (5) of this section.

(1) Surface coating conducted at a source that uses only coatings, thinners, and cleaning materials that contain no organic HAP, as determined according to § 63.3541(a).

(2) Surface coating subject to any other NESHAP in this part as of [date of publication of the final rule in the **Federal Register**].

(3) Surface coating that occurs at research or laboratory facilities or that is part of janitorial, building, and facility maintenance operations.

(4) Surface coating of continuous metal coil that may subsequently be

used in manufacturing cans. Subpart SSSS of this part covers surface coating performed on a continuous metal coil substrate.

(5) Surface coating of metal pails, buckets, and drums. Subpart MMMM of this part covers surface coating of all metal parts and products not explicitly covered by another subpart.

§ 63.3482 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of metal cans and ends (including decorative tins), or metal crowns or closures within each subcategory:

(1) All coating operations as defined in § 63.3581;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if it meets the criteria in paragraph (c)(1) of this section and the criteria in either paragraph (c)(2) or (3) of this section.

(1) You commenced construction of the source after January 15, 2003 by installing new coating equipment.

(2) The new coating equipment is used to perform metal can surface coating at a facility where no metal can surface coating was previously performed.

(3) The new coating equipment is used to perform metal can surface coating in a subcategory at a facility where no surface coating in that subcategory was previously performed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.3483 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.3540, 63.3550, 63.3560, and 63.3570.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section.

(1) If the initial startup of your new or reconstructed affected source is before [date of publication of final rule in the **Federal Register**], the compliance date is [date of publication of final rule in the **Federal Register**].

(2) If the initial startup of your new or reconstructed affected source occurs after [date of publication of final rule in the **Federal Register**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is [date 3 years after date of publication of final rule in the **Federal Register**].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or [date of publication of final rule in the **Federal Register**], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or [date 3 years after date of publication of final rule in the **Federal Register**], whichever is later.

(d) You must meet the notification requirements in § 63.3510 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.3490 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere to no more than the emission limit(s) in Table 1 to this subpart that apply to you during each 12-month compliance period, determined according to the requirements in §§ 63.3541, 63.3551, or 63.3561 or, if you control emissions with an emissions control system using the control efficiency/outlet concentration option as specified in § 63.3491(d), you must reduce organic HAP emissions to the atmosphere to no more than the limit(s) in Table 3 to this subpart determined according to the requirements of § 63.3571. If you perform surface coating in more than one subcategory or utilize more than one coating type within a subcategory, then you must meet the individual emission limit(s) for each subcategory and coating type included.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere to no more than the emission limit(s) in Table 2 to this subpart that apply to you during each 12-month compliance period, determined according to the requirements in §§ 63.3541, 63.3551, or 63.3561 or, if you control emissions with an emissions control system using the control efficiency/outlet concentration option as specified in § 63.3491(d), you must reduce organic HAP emissions to the atmosphere to no more than the limit(s) in Table 3 to this subpart determined according to the requirements of § 63.3571. If you perform surface coating in more than one subcategory or utilize more than one coating type within a subcategory, then you must meet the individual emission limit(s) for each subcategory and coating type included.

(c) If you perform surface coating in different subcategories as described in § 63.3481(a)(1) through (4), then the coating operations in each subcategory constitute a separate affected source and you must conduct separate compliance demonstrations for each applicable subcategory and coating type emission limit in paragraphs (a) and (b) of this section and reflect those separate determinations in notifications, reports, and records required by §§ 63.3510, 63.3520, and 63.3530, respectively.

§ 63.3491 What are my options for meeting the emission limits?

You must include all coatings and thinners used in all surface coating operations within a subcategory or coating type segment when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.3490. To make that determination, you must use at least one of the four compliance options listed in paragraphs (a) through (d) of this section. You may apply any of the compliance options to an individual coating operation or to multiple coating operations within a subcategory or coating type segment as a group. You may use different compliance options for different coating operations or at different times on the same coating

operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document that switch as required by § 63.3530(c) and you must report it in the next semiannual compliance report required in § 63.3520.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490 and that each thinner used contains no organic HAP. You must meet all the requirements of §§ 63.3540, 63.3541, and 63.3542 to demonstrate compliance with the emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings and thinners used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.3550, 63.3551, and 63.3552 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings and thinners used in the coating operation(s) and the emission reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you use that compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.3492, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3561(j), and that you meet the work practice standards required in § 63.3493. You must meet all the requirements of §§ 63.3560 through 63.3568 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

(d) *Control efficiency/outlet concentration option.* Demonstrate that, based on the emission reductions achieved by emission capture systems and add-on controls, total HAP emissions measured as total hydrocarbon (THC) are reduced by 95 percent or greater for existing sources or 97 percent or greater for new or reconstructed sources or that outlet THC emissions are less than or equal to 20 parts per million by volume, dry basis (ppmvd). If you use that compliance option, you must have a capture device that meets EPA Method 204 criteria for a permanent total enclosure (PTE). You must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.3492 and that you meet the work practice standards required in § 63.3493. You must meet all the requirements of §§ 63.3570 through 63.3578 to demonstrate compliance with the emission limits, operating limits, and work practice standards using that option.

§ 63.3492 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option or the control efficiency/outlet concentration option except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.3561(j), you must meet the operating limits specified in Table 4 to this subpart. Those operating limits apply to the emission capture and control systems on the coating operation(s) for which you use the options. You must establish the operating limits during the performance test according to the requirements in § 63.3567 or § 63.3577, and you must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 4 to this subpart or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3493 What work practice standards must I meet?

(a) For any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option to comply with the emission limitations, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) for which you use those options; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.3500 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3491(a) and (b), must be in compliance with the applicable emission limit in § 63.3490.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.3491(c), or the control efficiency/outlet concentration option, as specified in § 63.3491(d), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.3490 at all times.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3492 at all times except for those for which you use a solvent recovery system and conduct liquid-liquid material balances according to § 63.3561(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.3493 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.3501 What parts of the General Provisions apply to me?

Table 5 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.3510 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [date of publication of final rule in the **Federal Register**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than [date 1 year after date of publication of final rule in the **Federal Register**].

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in §§ 63.3540, 63.3550, 63.3560, or 63.3570 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (9) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in §§ 63.3540, 63.3550, 63.3560, or 63.3570 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.3491 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description of and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.3490, include all the calculations you used to determine the kilogram (kg) organic HAP emitted per liter of coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material or a summary of the results of testing conducted according to § 63.3541(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating and for one thinner.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating and one thinner, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.3551.

(8) The calculation of kg organic HAP emitted per liter of coating solids used for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 1 of § 63.3541.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month, the calculation of the total volume of coating solids used each month, and the calculation of the 12-month organic HAP emission rate, using Equations 1, 1A through 1C, 2, and 3, respectively, of § 63.3551.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3551; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3551; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3561, and Equations 2, 3, and 3A through 3C of § 63.3561, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3561, as applicable; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3561.

(9) For the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section. The requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3561(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a PTE or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart

KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.3493.

§ 63.3520 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3540, § 63.3550, § 63.3560, or § 63.3570 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission will be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.3491 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.3491(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations, operating limits, or work practice standards in §§ 63.3490, 63.3492, and 63.3493 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: compliant material option.* If you used the compliant material option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the emission limit, each thinner used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content (using Equation 1 of § 63.3541) for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by coating suppliers or manufacturers, or test reports.

(iii) The determination of mass fraction of organic HAP for each coating and thinner identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by material suppliers or manufacturers, or test reports.

(iv) A statement of the cause of each deviation.

(6) *Deviations: emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You

must provide the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.3551; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3551(e)(4). You do not need to submit background data supporting these calculations, for example, information provided by materials suppliers or manufacturers, or test reports.

(iii) A statement of the cause of each deviation.

(7) *Deviations: emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. That includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3551 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3551(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3551; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3561, and Equations 2, 3, and 3A through 3C of § 63.3561, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3561; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3561. You do not need to submit the background data supporting these calculations (*e.g.*, information provided by materials suppliers or manufacturers, or test reports).

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 4 to this subpart and each bypass of the add-on control device during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(8) *Deviations: control efficiency/outlet concentration option.* If you used the control efficiency/outlet concentration option, and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The date and time that each malfunction started and stopped.

(ii) A brief description of the CPMS.

(iii) The date of the latest certification or audit of the CPMS.

(iv) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(v) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(vi) The date and time period of each deviation from an operating limit in Table 4 of this subpart; date and time of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(vii) A summary of the total duration of each deviation from an operating limit in Table 4 of this subpart and each bypass of the add-on control device during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(viii) A breakdown of the total duration of the deviations from the operating limits in Table 4 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(ix) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(x) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xi) For each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation.

(xii) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must

submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your SSMP, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your SSMP, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.3530 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep the records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating and thinner and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations at which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 1 of § 63.3541.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A through 1C, and 2 of § 63.3551 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3551(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3551; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.3551.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3551 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3551(e)(4).

(ii) The calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3551.

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3561, and Equations 2, 3, and 3A through 3C of § 63.3561, as applicable.

(iv) The calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3561.

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.3561.

(5) For the control efficiency/outlet concentration option, records of the measurements made by the CPMS used to demonstrate compliance. For any coating operation(s) for which you use this option, you do not have to keep the records specified in paragraphs (d) through (g) of this section.

(d) A record of the name and volume of each coating and thinner used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating and thinner used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period.

(g) A record of the density for each coating used during each compliance period; and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each thinner used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.3551 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.3551(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.3551, a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.3551.

(3) The methodology used in accordance with § 63.3551(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month and the methodology to determine the mass of organic HAP contained in these waste materials. That must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 4 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture

efficiency of 100 percent, as specified in § 63.3565(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.3564 and 63.3565(b) through (e) including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation and the total TVH for all materials used during each capture efficiency test run including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure (TTE) or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a TTE or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the TTE or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51 including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a TTE or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.3565(e) if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.3566 or § 63.3576.

(i) Records of each add-on control device performance test conducted according to § 63.3564 or § 63.3574 and § 63.3566 or § 63.3576.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.3567 or § 63.3577 and to document compliance with the operating limits as specified in Table 4 to this subpart.

(8) A record of the work practice plan required by § 63.3493 and documentation that you are implementing the plan on a continuous basis.

§ 63.3531 In what form and for how long must I keep my records?

(a) Your records must be kept in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.3540 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.3541. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.3541 and supporting documentation showing that, during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.3490 and that you used no thinners that contained organic HAP.

§ 63.3541 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations within a subcategory or coating type segment, or for all the coating operations within a subcategory or coating type segment. You must use either the emission rate without add-on controls option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use that option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.3490 and must use no thinner that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.3492 and 63.3493, respectively. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, and end lining affected source. You must meet all the requirements of this section for the coating operation or group of coating operations using this option. Use the procedures in this section on each coating and thinner in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration (*e.g.*, mixing or thinning). Do not include any coatings or thinners used on coating operations for which you use the emission rate without add-on controls option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option. You do not need to redetermine the HAP content of coatings or thinners that have been reclaimed onsite and reused in the coating operation(s) for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating and thinner used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of

organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (for example, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24 (Appendix A to 40 CFR Part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in those solvent blends listed in Table 6 or 7 to this subpart. If you use the tables, you must use the values in Table 6 to this subpart for all solvent blends that match Table 6 entries, and you may only use Table 7 to this subpart if the solvent blends in the materials you use do not match any of the solvent blends in Table 6 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 (40 CFR part 63, appendix A) test indicate higher values than those listed on Table 6 or 7 to this subpart, the Method 311 (40 CFR part 63, appendix A) results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material as specified in paragraphs (b)(1) and (2) of this section. If test results obtained according to paragraph (b)(1) of this section do not agree with the information obtained under paragraph (b)(2) of this section, the test results will take precedence.

(1) *ASTM Method D2697–86 (Reapproved 1998) or D6093–97.* You may use ASTM Method D2697–86 (Reapproved 1998) or D6093–97 to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–98 or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–98 test results and the supplier's or manufacturer's information, the test results will take precedence.

(d) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, kg organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 1 of this section.

$$H_c = \frac{(D_c)(W_c)}{V_s} \qquad \text{(Eq. 1)}$$

Where:

H_c = organic HAP content of the coating, kg organic HAP per liter coating solids.

D_c = density of coating, kg coating per liter coating, determined according to paragraph (c) of this section.

W_c = mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = volume fraction of coating solids, liter coating solids per liter coating, determined according to paragraph (b) of this section.

(e) *Compliance demonstration.* The organic HAP content for each coating used during the initial compliance period, determined using Equation 1 of this section, must be less than or equal to the applicable emission limit in § 63.3490 and each thinner used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required in § 63.3510, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.3490 and you used no thinners that contained organic HAP, determined according to paragraph (a) of this section.

§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period, to demonstrate continuous compliance, you must use no coating for which the organic HAP content, determined using Equation 1 of § 63.3541, exceeds the applicable emission limit in § 63.3490 and use no thinner that contains organic HAP, determined according to § 63.3541(a). A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3540 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating or thinner that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(5).

(c) As part of each semiannual compliance report required by § 63.3520, you must identify the coating operation(s) for which you used the compliant material option. If there were no deviations from the emission limitations in § 63.3490, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable emission limit in § 63.3490 and you used no thinner or cleaning material that contained organic HAP, determined according to § 63.3541(a).

(d) You must maintain records as specified in §§ 63.3530 and 63.3531.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.3550 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3551. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.3551 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3490.

§ 63.3551 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You must use either the compliant material option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use this option. If you use the alternative overall emission limit for a subcategory according to paragraph (i) of this section to demonstrate compliance, however, you must include all coating operations in all coating type segments in the subcategory to determine compliance with the overall limit. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.3490, but is not required to meet the operating limits or work practice standards in §§ 63.3492 and 63.3493, respectively. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, and end lining affected source. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.3490 for the coating operation(s). When calculating the organic HAP emission rate according to this section, do not include any coatings or thinners used on coating operations for which you use the compliant material option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option or coating operations in a different affected source in a different subcategory. Use the procedures in this section on each coating and thinner in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration (*e.g.*, mixing or thinning). You do not need to redetermine the mass of organic HAP in coatings or thinners that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating and thinner used during each month according to the requirements in § 63.3541(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during each month according to the requirements in § 63.3541(b).

(c) *Determine the density of each material.* Determine the density of each coating and thinner used during each month from test results using ASTM Method D1475–98, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and such other information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (liters) of each coating and thinner used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings and thinners used during each month minus the organic HAP in certain waste materials. Calculate it using Equation 1 of this section.

$$H_e = A + B - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the month, kg.

A = total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners used during the month, kg, as calculated in Equation 1B of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, kg, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the mass of organic HAP in the coatings used during the month, using Equation 1A of this section.

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg coating per liter coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = number of different coatings used during the month.

(2) Calculate the mass of organic HAP in the thinners used during the month using Equation 1B of this section.

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass of organic HAP in the thinners used during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.
$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.
n = number of different thinners used during the month.

(3) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (e)(3)(i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document the methodology you used to determine the amount of waste materials and the total mass of organic HAP they contain as required in § 63.3530(h). To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used which is the combined volume of coating solids for all the coatings used during each month, using Equation 2 of this section.

$$V_{st} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(V_{s,i}\right) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = total volume of coating solids used during the month, liters.
$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.
$V_{s,i}$ = volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3541(b).
m = number of coatings used during the month.

(g) *Calculate the organic HAP emission rate.* Calculate the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 3 of this section.

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.
H_e = total mass of organic HAP emissions, kg, from all materials used during month, y, as calculated by Equation 1 of this section.
V_{st} = total volume of coating solids, liters, used during month, y, as calculated by Equation 2 of this section.
y = identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period, H_{yr}, must be less than or equal to the applicable emission limit in § 63.3490. You must keep all records as required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3490, determined according to this section.

(i) *Alternative calculation of overall subcategory emission limit (OSEL).* Alternatively, if your affected source applies coatings in more than one coating type segment within a subcategory, you may calculate an overall HAP emission limit for the subcategory using Equation 4 of this section. If you use this approach, you must limit organic HAP emissions to the atmosphere to the OSEL specified by Equation 4 of this section during each 12-month compliance period.

$$OSEL = \frac{\sum_{i=1}^{n} L_i(V_i)}{\sum_{i=1}^{n} V_i} \qquad \text{(Eq. 4)}$$

Where:

OSEL = total allowable organic HAP in kg HAP/liter coating solids (pound (lb) HAP/gal solids) that can be emitted to the atmosphere from all coating type segments in the subcategory.
L_i = HAP emission limit for coating type segment i from Table 1 for a new or reconstructed source or Table 2 for an existing source, kg HAP/liter coating solids (lb HAP/gal solids).
V_i = total volume of coating solids in liters (gal) for all coatings in coating type segment i used during the 12-month compliance period.
n = number of coating type segments within one subcategory being used at the affected source.

You must use the OSEL determined by Equation 4 throughout the 12-month compliance period and may not switch between compliance with individual coating type limits and an OSEL. You may not include coatings in different subcategories in determining your OSEL by this approach. You must keep all records as required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required by § 63.3510, you must identify the subcategory for which you used a calculated OSEL and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate for the subcategory was less than or equal to the OSEL determined according to this section.

§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.3551(a) through (g), must be less than or equal to the applicable emission limit in § 63.3490. Alternatively, if you calculate an OSEL for all coating type segments within a subcategory according to § 63.3551(i), the organic HAP emission rate for the subcategory for each compliance period must be less than or equal to the calculated OSEL. You must use the calculated OSEL throughout each compliance period. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3550 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4551(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3490 or the OSEL calculated according to § 63.3551(i), this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.3510(c)(6) and 63.3520(a)(6).

(c) As part of each semiannual compliance report required by § 63.3520, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490 determined according to § 63.3551(a) through (g), or using the OSEL calculated according to § 63.3551(i).

(d) You must maintain records as specified in §§ 63.3530 and 63.3531.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.3560 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) New and reconstructed affected sources. For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3561(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.3564, 63.3565, and 63.3566 and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3561(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3561. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3564, 63.3565, and 63.3566, results of liquid-liquid material balances conducted according to § 63.3561(j), calculations according to § 63.3561 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.3490(a), the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3568, and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3561(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3561(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.3564, 63.3565, and 63.3566 and establish the operating limits required by § 63.3492 no later than the compliance date specified in § 63.3483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3561(j), you must initiate the first material balance no later than the compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3561. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3564, 63.3565, and 63.3566, results of liquid-liquid material balances conducted according to § 63.3561(j), calculations according to § 63.3561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limit in § 63.3490(b), the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3568, and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

§ 63.3561 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option, the emission rate

without add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in § 63.3490. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, and end lining affected source. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings or thinners used on coating operations for which you use the compliant material option, the emission rate without add-on controls option, or the control efficiency/outlet concentration option. You do not need to redetermine the mass of organic HAP in coatings or thinners that have been reclaimed on-site and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.3560(a)(4) and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.3561(j), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3492 using the procedures specified in §§ 63.3567 and 63.3568.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3493 during the initial compliance period, as specified in § 63.3530.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.3490.

(e) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.3551(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating and thinner used during each month and the volume fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.3551, calculate the total mass of organic HAP emissions before add-on controls from all coatings and thinners used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. Equation 1 of this section accounts for any period of time a deviation specified in § 63.3563(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction during which you must assume zero efficiency for the emission capture system and add-on control device.

$$H_c = (A_c + B_c - R_w\left(\frac{CE}{100} \times \frac{DRE}{100}\right)\left(\frac{T_{op} - T_{dev}}{T_{op}}\right) \qquad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

A_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 1A of this section.

B_C = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 1B of this section.

R_W = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, kg, determined according to § 63.3551(e)(4).

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3564 and 63.3565 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3564 and 63.3566 to measure and record the organic HAP destruction or removal efficiency.

T_{op} = total time period of operation of controlled coating operation during the month, hours.

T_{dev} = total time period of deviations for controlled coating operation during the month, hours.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 1A of this section.

$$A_C = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 1B of this section.

$$B_C = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B_C = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter thinner.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = number of different thinners used.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3551(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section.

$$R_V = 100\frac{M_{VR}}{\sum_{i=1}^{m}\left(Vol_i\right)\left(D_i\right)\left(WV_{c,i}\right)+\sum_{j=1}^{n}\left(Vol_j\right)\left(D_j\right)\left(WV_{t,j}\right)} \qquad \text{(Eq. 2)}$$

Where:

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the month, kg.

Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_i = density of coating, i, kg per liter.

$WV_{c,i}$ = mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.

Vol_j = volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_j = density of thinner, j, kg per liter.

$WV_{t,j}$ = mass fraction of volatile organic matter for thinner, j, kg volatile organic matter per kg thinner.

m = number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = number of different thinners used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 3 of this section.

$$H_{CSR} = \left(A_{CSR} + B_{CSR}\right)\left(\frac{R_v}{100}\right) \qquad \text{(Eq. 3)}$$

Where:

H_{CSR} = mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, kg.

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3A of this section.

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3B of this section.

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 3A of this section.

$$A_{CSR} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 3A)}$$

Where:

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, using Equation 3B of this section.

$$B_{CSR} = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 3B)}$$

Where:

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(k) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used which is the combined volume of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.3551.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions during each month, using Equation 4 of this section.

$$H_{HAP} = H_e - \sum_{i=1}^{q} \left(H_{c,i}\right) - \sum_{j=1}^{r} \left(H_{CSR,j}\right) \qquad \text{(Eq. 4)}$$

Where:

H_{HAP} = total mass of organic HAP emissions for the month, kg.

H_e = total mass of organic HAP emissions before add-on controls from all the coatings and thinners used during the month, kg, determined according to paragraph (f) of this section.

$H_{C,i}$ = total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, kg, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 3 of this section.

q = number of controlled coating operations not using a liquid-liquid material balance.

r = number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 5 of this section.

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} V_{st,y}} \qquad \text{(Eq. 5)}$$

Where:

H_{annual} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

$H_{HAP,y}$ = organic HAP emission rate for month, y, determined according to Equation 4 of this section.

$V_{st,y}$ = total volume of coating solids used during month, y, liters, from Equation 2 of § 63.3551.

y = identifier for months.

(n) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, the organic HAP emission rate, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit in § 63.3490. You must keep all records as required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the emission rate with

add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3490 and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493.

§ 63.3562 [Reserved]

§ 63.3563 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3490, the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.3561, must be equal to or less than the applicable emission limit in § 63.3490. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3560 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3561 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3490, that is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3492 that applies to you as specified in Table 4 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 4 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 4 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.3561(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3561.

(d) You must meet the requirements for bypass lines in § 63.3568(b) for controlled coating operations for which you do not conduct material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7). For the purposes of completing the compliance calculations specified in §§ 63.3561(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3561.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.3493. If you did not develop a work practice plan or you did not implement the plan or you did not keep the records required by § 63.3530(k)(8), that is a deviation from the work practice standards that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(f) As part of each semiannual compliance report required in § 63.3520, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490 and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.3500(c).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.3530 and 63.3531.

§ 63.3564 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3560 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3565. You must conduct each performance test of an add-on control device according to the requirements in § 63.3566.

§ 63.3565 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3560.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings and thinners used in the coating operation are applied within the capture system and coating solvent flash-off and coating, curing, and drying

occurs within the capture system. For example, the criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a TTE or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings and thinners are applied and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a TTE or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating and thinner used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings and thinners used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = total mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = mass fraction of TVH in coating or thinner, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material

Vol_i = total volume of coating or thinner, i, used in the coating operation during the capture efficiency test run, liters.

D_i = density of coating or thinner, i, kg material per liter material.

n = number of different coatings and thinners used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the TTE or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a TTE.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure other than the coating operation for which capture efficiency is being determined must be shut down but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section.

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of liquid TVH used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the TTE or building enclosure during the capture efficiency test run, kg, determined according to paragraph (c)(4) of this section.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a TTE or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings and thinners are applied and all areas where emissions from these applied coatings and materials subsequently occur such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device such as the entrance and exit areas of an oven

or a spray booth must also be inside the enclosure. The enclosure must meet the applicable definition of a TTE or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C of appendix M to 40 CFR part 51 measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the TTE or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a TTE.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section.

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg, determined according to paragraph (d)(2) of this section.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the TTE or building enclosure during the capture efficiency test run, kg, determined according to paragraph (d)(3) of this section.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.3566 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3560. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses.''

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously using either Method 25 or 25A of appendix A to 40 CFR part 60 as specified in paragraphs (b)(1) through (5) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A to 40 CFR part 60 if the add-control device is not an oxidizer.

(4) You may use Method 18 of appendix A to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

(5) Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator may be used.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume dilute stream that has been treated by the concentrator and a second add-on control device is an oxidizer with an outlet for the low-volume concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg per hour (kg/h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmvd.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section.

$$DRE = 100 \times \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3567 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.3560 and described in §§ 63.3564, 63.3565, and 63.3566, you must establish the operating limits required by § 63.3492 according to this section unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. That is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e,* conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency according to § 63.3566.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle, and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record

the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3565(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 4 to this subpart.

(1) During the capture efficiency determination required by § 63.3560 and described in §§ 63.3564 and 63.3565, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.3568 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out of control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3520.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section.

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install a gas temperature monitor in the gas stream immediately before the catalyst bed, and if you establish operating limits according to § 63.3567(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(i) If you establish operating limits according to § 63.3567(b)(1) and (2), then you must install the gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.3567(b)(3) and (4), then you must install a gas temperature monitor upstream of the catalyst bed. The temperature monitor must be in the gas stream immediately before the catalyst bed to measure the temperature.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that

provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Compliance Requirements for the Control Efficiency/Outlet Concentration Option

§ 63.3570 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. You must conduct a performance test of each capture system and add-on control device according to §§ 63.3574, 63.3575, and 63.3576 and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3571. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to § 63.3574, 63.3575, and 63.3576, the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3578, and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits on the date you complete the performance tests specified in paragraph (a)(1) of this section.

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3571. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3574, 63.3575, and 63.3576, the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3578, and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

§ 63.3571 How do I demonstrate initial compliance?

(a) You may use the control efficiency/outlet concentration option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You must use the compliant material option, the emission rate without add-on controls option, or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use the control efficiency/outlet concentration option. To demonstrate initial compliance, the coating operation(s) for which you use the control efficiency/outlet concentration option must meet the applicable levels of emission reduction in § 63.3490. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, and end lining affected source.

(b) *Compliance with operating limits.* You must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3492, using the procedures specified in §§ 63.3577 and 63.3578.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3493 during the initial compliance period, as specified in § 63.3530.

(d) *Compliance demonstration.* To demonstrate initial compliance, you must keep all records applicable to the control efficiency/outlet concentration option as required by §§ 63.3530 and 63.3531. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the control efficiency/outlet concentration option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493.

§ 63.3572 [Reserved]

§ 63.3573 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the emission limitations using the control efficiency/outlet concentration option, the organic HAP emission rate for each compliance period must be equal to or less than 20 ppmvd or must be reduced by the amounts specified in § 63.3490. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3570 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) You must demonstrate continuous compliance with each operating limit required by § 63.3492 that applies to you, as specified in Table 4 to this subpart. If an operating parameter is out of the allowed range specified in Table 4 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(c) You must meet the requirements for bypass lines in § 63.3578(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating

operation is running, this is a deviation that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(d) You must demonstrate continuous compliance with the work practice standards in § 63.3493. If you did not develop a work practice plan or you did not implement the plan or you did not keep the records required by § 63.3530(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.3510(b)(6) and 63.3520(a)(7).

(e) As part of each semiannual compliance report required in § 63.3520, you must identify the coating operation(s) for which you used the control efficiency/outlet concentration option. If there were no deviations from the operating limits or work practice standards, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than 20 ppmvd or was reduced by the amount specified in § 63.3490 and you achieved the work practice standards required by § 63.3493 during each compliance period.

(f) During periods of startup, shutdown, or malfunctions of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.3500(c).

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(h) You must maintain records applicable to the control efficiency/outlet concentration option as specified in §§ 63.3530 and 63.3531.

§ 63.3574 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3570 according to the requirements of § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation(s). Operations during periods of startup, shutdown, or malfunction and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3575. You must conduct each performance test of an add-on control device according to the requirements in § 63.3576.

§ 63.3575 How do I determine the emission capture system efficiency?

The capture efficiency of your emission capture system must be 100 percent to use the control efficiency/outlet concentration option. You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a) and (b) of this section are met.

(a) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(b) All coatings and thinners used in the coating operation are applied within the capture system, and coating solvent flash-off, curing, and drying occurs within the capture system. This criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

§ 63.3576 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3570. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2,2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses.''

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60 as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 ppm at the control device outlet.

(2) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume dilute stream that has been treated by the concentrator and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must

measure emissions at the outlet of the oxidizer and the high-volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/h.

C_c = the concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmvd.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m ^{3}) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section.

$$DRE = 100 \times \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3577 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.3570 and described in §§ 63.3574, 63.3575, and 63.3576, you must establish the operating limits required by § 63.3492 according to this section unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. Those are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e,* conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency according to § 63.3576.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at

least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture systems.* For each capture device that is part of a PTE that meets the criteria of § 63.3575, the operating limit for a PTE is specified in Table 4 to this subpart.

§ 63.3578 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out of control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3520.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section.

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install a gas temperature monitor in the gas stream immediately before the catalyst bed and if you establish operating limits according to § 63.3577(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(i) If you establish operating limits according to § 63.3577(b)(1) and (2), then you must install the gas temperature monitors both upstream

and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.3577(b)(3) and (4), then you must install a gas temperature monitor upstream of the catalyst bed. The temperature monitor must be in the gas stream immediately before the catalyst bed to measure the temperature.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.3580 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this

section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the work practice standards in § 63.3493.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.3581 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Aerosol can means any can into which a pressurized aerosol product is packaged.

Aseptic coating means any coating that must withstand high temperature steam, chemicals, or a combination of both used to sterilize food cans prior to filling.

Can body means a formed metal can, excluding the unattached end(s).

Can end means a can part manufactured from metal substrate equal to or thinner than 0.3785 millimeters (mm) (0.0149 inch) for the purpose of sealing the ends of can bodies including non-metal or composite can bodies.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or *capture system efficiency* means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings or cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials such as dirt, grease, oil, and dried or wet coating (*e.g.*, depainting) from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply coating to a metal can or end (including decorative tins), or metal crown or closure, and to dry or cure the coating after application. A coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup markers, or marking pens is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of a coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating operation, capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Crowns and closures means steel or aluminum coverings such as bottle caps and jar lids for containers other than can ends.

Decorative tin means a single-walled container, designed to be covered or uncovered that is manufactured from metal substrate equal to or thinner than 0.3785 mm (0.0149 inch) and is normally coated on the exterior surface with decorative coatings. Decorative tins may contain foods but are not hermetically sealed and are not subject to food processing steps such as retort or pasteurization. Interior coatings are not applied to protect the metal and contents from chemical interaction.

Deviation means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction regardless of whether or not such failure is permitted by this subpart.

Drum means a cylindrical metal container with walls of 29 gauge or thicker and a capacity greater than 45.4 liters (12 gal).

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

End lining means the application of end seal compound on can ends during end manufacturing.

End seal compound means the coating applied onto ends of cans that functions to seal the end(s) of a can to the can body.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Food can means any can manufactured to contain edible products and designed to be hermetically sealed. Does not include decorative tins.

General line can means any can manufactured to contain inedible products. Does not include aerosol cans or decorative tins.

Inside spray means a coating sprayed on the interior of a can body to provide a protective film between the can and its contents.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the

material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.3541. Manufacturer's formulation data may include but are not limited to information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Metal can means a single-walled container manufactured from metal substrate equal to or thinner than 0.3785 mm (0.0149 inch).

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Non-aseptic coating means any coating that is not subjected to high temperature steam, chemicals, or a combination of both to sterilize food cans prior to filling.

One and two-piece draw and iron can means a steel or aluminum can manufactured by the draw and iron process. Includes two-piece beverage cans, two-piece food cans, and one-piece aerosol cans.

One-piece aerosol can means an aerosol can formed by the draw and iron process to which no ends are attached and a valve is placed directly on top.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating, calculated using Equation 1 of § 63.3541. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Pail means a cylindrical or rectangular metal container with walls of 29 gauge or thicker and a capacity of 7.6 to 45.4 liters (2 to 12 gal) (*i.e.*, bucket).

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products that is conducted under the close supervision of technically trained personnel and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Sheetcoating means a can manufacturing coating process that involves coating of flat metal sheets before they are formed into cans.

Side seam stripe means a coating applied to the interior and/or exterior of the welded or soldered seam of a three-piece can body to protect the exposed metal.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. That includes use of a cleaning material to remove dried coating which is sometimes called ''depainting.''

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Three-piece aerosol can means a steel aerosol can formed by the three-piece can assembly process manufactured to contain food or non-food products.

Three-piece can assembly means the process of forming a flat metal sheet into a shaped can body which may include the processes of necking, flanging, beading, and seaming and application of a side seam stripe and/or an inside spray coating.

Three-piece food can means a steel can formed by the three-piece can assembly process manufactured to contain edible products and designed to be hermetically sealed.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Two-piece beverage can means a two-piece draw and iron can manufactured to contain drinkable liquids such as beer, soft drinks, or fruit juices.

Two-piece food can means a steel or aluminum can manufactured by the draw and iron process and designed to contain edible products other than beverages and to be hermetically sealed.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

Tables to Subpart KKKK of Part 63

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(a) through (c).

TABLE 1 TO SUBPART KKKK OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	then for all coatings of this type . . .	you must meet the following organic HAP emission limit in kg/liter solids (lbs HAP/gal solids): [a]
1. One and two-piece draw and iron can body coating	a. Two-piece beverage cans—all coatings	0.04 (0.31)
	b. Two-piece food cans—all coatings	0.06 (0.50)
	c. One-piece aerosol cans—all coatings	0.08 (0.65)
2. Sheetcoating	Sheetcoating	0.02 (0.17)
3. Three-piece can assembly	a. Inside spray	0.12 (1.03)
	b. Aseptic side seam stripes on food cans	1.48 (12.37)
	c. Non-aseptic side seam stripes on food cans	0.72 (5.96)
	d. Side seam stripes on general line non-food cans	1.18 (9.84)
	e. Side seam stripes on aerosol cans	1.46 (12.14)
4. End lining	a. Aseptic end seal compounds	0.06 (0.54)
	b. Non-aseptic end seal compounds	0.00 (0.00)

[a] If you apply surface coatings of more than one type within any one subcategory you may calculate an OSEL according to § 63.3551(i).

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(a) through (c).

TABLE 2 TO SUBPART KKKK OF PART 63.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	then for all coatings of this type . . .	you must meet the following organic HAP emission limit in kg HAP/liter solids (lbs HAP/gal solids): [a]
1. One and two-piece draw and iron can body coating	a. Two-piece beverage cans—all coatings	0.07 (0.59)
	b. Two-piece food cans—all coatings	0.06 (0.51)
	c. One-piece aerosol cans—all coatings	0.12 (0.99)
2. Sheetcoating	Sheetcoating	0.03 (0.26)
3. Three-piece can assembly	a. Inside spray	0.29 (2.43)
	b. Aseptic side seam stripes on food cans	1.94 (16.16)
	c. Non-aseptic side seam stripes on food cans	0.79 (6.57)
	d. Side seam stripes on general line non-food cans	1.18 (9.84)
	e. Side seam stripes on aerosol cans	1.46 (12.14)
4. End lining	a. Aseptic end seal compounds	0.06 (0.54)
	b. Non-aseptic end seal compounds	0.00 (0.00)

[a] If you apply surface coatings of more than one type within any one subcategory you may calculate an OSEL according to § 63.3551(i).

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(d).

TABLE 3 TO SUBPART KKKK OF PART 63.—EMISSION LIMITS FOR AFFECTED SOURCES USING THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

If you use the control efficiency/outlet concentration option to comply with the emission limitations for any coating operation(s) . . .	then you must comply with one of the following by using an emissions control system to . . .
1. in a new or reconstructed affected source	a. reduce emissions of total HAP, measured as THC (as carbon),[a] by 97 percent; or b. limit emissions of total HAP, measured as THC (as carbon)[a] to 20 ppmvd at the control device outlet and use a PTE.
2. in an existing affected source	a. reduce emissions of total HAP, measured as THC (as carbon),[a] by 95 percent; or b. limit emissions of total HAP, measured as THC (as carbon)[a] to 20 ppmvd at the control device outlet and use a PTE.

[a] You may choose to subtract methane from THC as carbon measurements.

If you are required to comply with operating limits by § 63.3492, you must comply with the applicable operating limits in the following table.

TABLE 4 TO SUBPART KKKK OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION OR THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

For the following device . . .	You must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to §63.3567(a) or §63.3577(a).	i. collecting the combustion temperature data according to §63.3568(c) or §63.3578(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to §63.3567(b) or §63.3577(b); and either.	i. collecting the temperature data according to §63.3568(c) or §6.3578(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to §63.3567(b)(2) or §63.3577(b)(2); or.	i. collecting the temperature data according to §63.3568(c) or §63.3578(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature difference at or above the temperature difference limit.
	c. develop and implement an inspection and maintenance plan according to §63.3567(b) (3) and (4) or §63.3577(b) (3) and (4).	maintaining an up-to-date inspection plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by §63.3567(b) (3) and (4) or §63.3577(b) (3) and (4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. carbon adsorber	a. the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to §63.3567(c) or §63.3577(c).	i. measuring the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle according to §63.3568(d) or §63.3578(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to §63.3567(c) or §63.3577(c).	i. measuring the temperature of the carbon bed, after completing each regeneration and any cooling cycle, according to §63.3568(d) or §63.3578(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to §63.3567(d) or §63.3577(d).	i. collecting the condenser outlet (product side) gas temperature according to §63.3568(e) or §63.3578(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to §63.3567(e) or §63.3577(e).	i. collecting the temperature data according to §63.3568(f) or §63.3578(f); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to §63.3567(e) or §63.3577(e).	i. collecting the pressure drop data according to §63.3568(f) or §63.3578(f); ii. reducing the pressure drop data to 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.
6. emission capture system that is a PTE according to §63.3565(a) or §63.3575(a).	a. the direction of the air flow at all times must be into the enclosure; and either.	i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to §63.3568(g)(1) or §63.3578(g)(1) or the pressure drop across the enclosure according to §63.3568(g)(2) or §63.3578(g)(2); and ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or.	see items 6.a. i and ii.

TABLE 4 TO SUBPART KKKK OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION OR THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION—Continued

For the following device . . .	You must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
	c. the pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	see items 6.a. i and ii.
7. emission capture system that is not a PTE according to § 63.3565(a) or § 63.3575(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3567(f) § 63.3577(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3568(g) or § 63.3578(g); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table.

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart KKKK is also specified in § 63.3481.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart KKKK.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3581.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources.	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	SSMP	Yes	Only sources using an add-on control device to comply with the standard must complete SSMP.
§ 63.6(f)(1)	Compliance Except During Start-up, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standards.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart KKKK does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3564, 63.3565, 63.3566, , 63.3575, and 63.3576.
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Sections 63.3560 and 63.3570 specify the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.		Yes
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(f)	Performance Test Requirementsk—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in §§ 63.3568 and 63.3578.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart KKKK does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	Continuous Monitoring System (CMS) Operataion and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in §§ 63.3568 and 63.3578.
§ 63.8(c)(4)	CMS	No	Sections 63.3568 and 63.3578 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart KKKK does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Sections 63.3568 and 63.3578 specify the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-control Period Reporting.	No	Section 63.3520 requires reporting of CMS out of control periods.

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.8(g)(1)–(5)	Data Reduction	No	§§ 63.3563, 63.3568, 63.3573 and 63.3578 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/ Opacity Test.	No	Subpart KKKK does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.3510 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.3530 and 63.3531.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for Startup, Shutdown, and Malfunction records only apply to add-on control devices used to comply with the standards.
§ 63.10(b)(2)(vi)–(xi)		Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.3520(a)(7).
§ 63.10(c)(9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3520.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.3520(b).
§ 63.10(d)(3)	Reporting Opacity Visible Emissions Observations.	No	Subpart KKKK does or not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply with the standards.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Yes	Applies only to sources using the outlet concentration limit option to comply with the standards.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3520(b) specifies the contents of periodic compliance reports.

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.10(e)(4)	COMS Data Reports	No	Subpart KKKK does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/ Flares.	No	Subpart KKKK does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 6 TO SUBPART KKKK OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P Naphtha	64742–89–8	0.06	3% toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 7 TO SUBPART KKKK OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

Solvent type	Average organic HAP, mass fraction	Typical Organic HAP percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene
Aromatic [c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 6 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] *e.g.*, Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] *e.g.*, Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

[FR Doc. 03–87 Filed 1–14–03; 8:45 am]

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Federal Register

Wednesday,
January 15, 2003

Part III

Department of Education

Rehabilitation Training: Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Training: Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a priority under the Rehabilitation Training: Rehabilitation Long-Term Training program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and in later years. We take this action to focus on training in an area of national need. This priority is designed to increase the number of rehabilitation counseling programs that provide experiential activities for students, such as formal internships, practicum agreements, and other partnership activities with State vocational rehabilitation (VR) agencies. This priority supports a close relationship between the educational institution and the State VR agency by creating or increasing ongoing collaboration in order to increase the number of graduates who seek employment in State VR agencies.

EFFECTIVE DATES: This priority is effective February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, RSA, 61 Forsyth Street, SW., Suite 18T91, Atlanta, GA 30303. Telephone (404) 562–6336 or via Internet: *Beverly.Steburg@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: State VR agencies throughout the nation are experiencing a personnel shortage of qualified VR counselors. While currently only a small percentage of Rehabilitation Services Administration (RSA)-funded graduates seek employment with State VR agencies, a survey conducted by the Council of State Administrators of Vocational Rehabilitation indicates that individuals who are aware of the distinct role of the qualified VR counselor and benefits of employment within a State VR agency are more likely to seek employment with the State.

This priority increases the number of rehabilitation counseling projects that incorporate formal experiential activities for students with State VR agencies.

We published a notice of proposed priority for this program in the **Federal Register** on August 19, 2002 (67 FR 53870). The notice of proposed priority included a discussion of the significant issues and analysis used in the determination of this priority.

There are no differences between the notice of proposed priority and this notice of final priority.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, eight parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority. We may choose to address those changes if we received a significant number of comments on a particular issue.

Comments: Two commenters recommended that the priority not establish new counseling training programs but be earmarked to provide support to a greater number of existing rehabilitation counselor training programs.

Discussion: The program authority establishes eligible applicants for the program. We have no authority to further restrict applicant eligibility.

Changes: None.

Comments: Three commenters recommended that funds be used to provide existing programs with support to conduct recruitment programs to encourage more students to enter rehabilitation counseling programs.

Discussion: We agree that recruitment activities to encourage more individuals to enter rehabilitation counseling programs are important. Grantees may use non-scholarship project funds to support recruitment activities. RSA also supports recruitment activities through other avenues, including the Regional Rehabilitation Continuing Education Program (RRCEP).

Changes: None.

Comments: Four commenters recommended using scholarship funds to provide paid internships with State VR agencies.

Discussion: The Rehabilitation Long-Term Training program limits scholarship assistance to the individual's cost of attendance at the academic degree or certificate-granting institution. Scholarships include payback obligations upon completion of the course of study, and grantees may not require other work as a condition of scholarships.

Changes: None.

Comment: One commenter recommended limiting internships with experiential opportunities to specific need areas within rehabilitation counseling, including the use of innovative technologies, multicultural competency, and counseling of particular disability groups.

Discussion: While it is possible for RSA to limit the required internship activities to particular counseling areas, we choose not to do so in this priority. Programs may choose in their applications to develop internships with a particular focus, including those listed by the commenter. Peer reviews of all applications received will assess the value of proposed projects. We encourage programs and students to explore any experiential activities that enhance students' knowledge of the VR system.

Changes: None.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Partnership With the State VR Agency

This priority supports projects that will increase the knowledge of students of the role and responsibilities of the VR counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internships or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 385 and 386.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.129B Rehabilitation Long-Term Training)

Program Authority: 29 U.S.C. 772.

Dated: January 10, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–868 Filed 1–15–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129B]

Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling

Notice inviting applications for new awards for fiscal year (FY) 2003.

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

For FY 2003, the competition for new awards focuses on projects designed to meet the priority we reference in the PRIORITY section of this application notice.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

Applications Available: January 17, 2003.

Deadline for Transmittal of Applications: March 7, 2003.

Deadline for Intergovernmental Review: May 6, 2003.

Estimated Available Funds: $4,800,000.

The Administration has requested $4,800,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $125,000 to $150,000.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 32.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

- A page is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

This competition focuses on projects designed to meet the priority in the notice of final priority for this program,

published elsewhere in this issue of the **Federal Register**.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet the priority.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Training: Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling, CFDA No. 84.129B, is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Training: Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within 3 working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Rehabilitation Training: Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of 1 business day in order to transmit your application electronically, by mail, or by hand delivery.

For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension.

To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the Rehabilitation Training: Rehabilitation Long-Term Training program—Vocational Rehabilitation Counseling at: *http://e-grants.ed.gov*.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from Ed Pubs, be sure to identify this competition as follows: CFDA number 84.129B.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, RSA, 61 Forsyth Street, SW., Suite 18T91, Atlanta, GA 30303. Telephone: (404) 562–6336 or via Internet: *Beverly.Steburg@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Program Authority: 29 U.S.C. 772.

Dated: January 10, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–869 Filed 1–14–03; 8:45 am]

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Federal Register

Wednesday,
January 15, 2003

Part IV

The President

Proclamation 7638—The Centennial of Korean Immigration to the United States

Federal Register
Vol. 68, No. 10
Wednesday, January 15, 2003

Presidential Documents

Title 3—

The President

Proclamation 7638 of January 13, 2003

The Centennial of Korean Immigration to the United States

By the President of the United States of America

A Proclamation

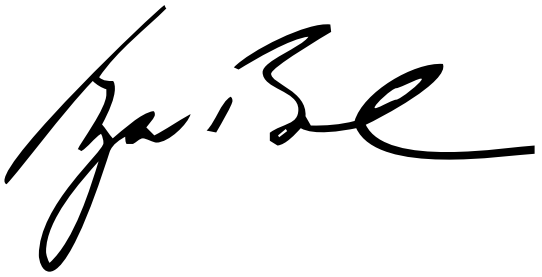
From every corner of the world, immigrants have come to America to discover the promise of our Nation. On January 13, 1903, the first Korean immigrants to the United States arrived in Honolulu, Hawaii, on the *SS Gaelic*. Today, Korean Americans live throughout the United States, representing one of our largest Asian-American populations. As we commemorate the centennial anniversary of Korean immigration to the United States, we recognize the invaluable contributions of Korean Americans to our Nation's rich cultural diversity, economic strength, and proud heritage.

For the past century, Korean immigrants and their descendants have helped build America's prosperity, strengthened America's communities, and defended America's freedoms. Through their service in World War I, World War II, the Korean Conflict, the Vietnam War, and other wars, Korean Americans have served our Nation with honor and courage, upholding the values that make our country strong.

The American and Korean people share a love of freedom and a dedication to peace. The United States was the first Western country to sign a treaty of commerce and amity with Korea in 1882, promising ''perpetual peace and friendship'' between our nations. Since that time, the United States has built a strong friendship with Korea—a friendship based on our common commitment to human dignity, prosperity, and democracy. In the coming months, more than 1 million Korean Americans throughout our Nation will celebrate the 100th anniversary of the arrival of the first Korean immigrants to the United States. During this time, we acknowledge and commend Korean Americans for their distinguished achievements in all sectors of life and for their important role in building, defending, and sustaining the United States of America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 13, 2003, as the Centennial of Korean Immigration to the United States. I call upon all Americans to observe the anniversary with appropriate programs, ceremonies, and activities honoring Korean immigrants and their descendants for their countless contributions to America.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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